

TRANSCRIPT OF PROCEEDINGS - SENTENCING
BEFORE THE HONORABLE RONALD A. GUZMAN

10 APPEARANCES:

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1 (Proceedings heard in open court:)

2 THE CLERK: 08 CR 115-3, United States of America v.
3 Sarno.

4 MR. BHACHU: Good morning, your Honor. Amar Bhachu
5 on behalf of the United States, together with Tinos
6 Diamantatos and Michael Donovan.

7 MR. DIAMANTATOS: Good morning, your Honor.

8 MR. DONOVAN: Good morning, your Honor.

9 MR. GILLESPIE: Good morning, your Honor. Terry
10 Gillespie, Jeff Steinback and Gabrielle Sansonetti on behalf
11 of Michael Sarno, who is present in court.

12 MR. STEINBACK: Good morning, your Honor.

13 THE COURT: Good morning, everyone.

14 Are we prepared to proceed to the sentencing?

15 MR. BHACHU: Yes, Judge.

16 MR. GILLESPIE: Yes, sir.

17 THE COURT: Very well. I think we still have pending
18 post-trial motions for a new trial and judgment.

19 MR. BHACHU: Yes, Judge.

20 THE COURT: Does either side wish to argue that?

21 MR. BHACHU: No, Judge.

22 MR. GILLESPIE: We don't, Judge.

23 THE COURT: Okay. Those motions are denied.

24 MR. BHACHU: Judge, I also had two other housekeeping
25 matters if I could bring to the Court's attention. I have a

1 preliminary order of forfeiture I would like to submit to the
2 Court, as well as a restitution chart. With regards to the
3 restitution chart, the total amount on the chart reflected is
4 \$1,784,077.

5 THE COURT: I assume the defense has seen this.

6 MR. GILLESPIE: Yes.

7 MR. STEINBACK: We have, Judge.

8 THE COURT: Is there an objection to the terms of the
9 preliminary order of forfeiture?

10 MR. GILLESPIE: Yes, sir.

11 THE COURT: Do you wish to be heard?

12 MR. GILLESPIE: No, your Honor.

13 THE COURT: Okay. The Court will enter the order.

14 PROBATION OFFICER: For the record, your Honor, Todd
15 McKechnie on behalf of the probation office.

16 MR. GILLESPIE: Your Honor, I just brought up to
17 counsel -- and I'm not sure that that chart -- we just got it
18 a few minutes ago. As the Court knows, you'll recall from the
19 trial -- it was a long time ago now -- that there was some
20 money found at Mr. Sarno's house. And we presented some
21 evidence in relation to some Christmas cards and that the
22 money belonged to Angelica, the daughter.

23 THE COURT: Birthday cards I think.

24 MR. GILLESPIE: Birthday or graduation. I think it
25 was graduation.

1 THE COURT: Okay.

2 MR. GILLESPIE: But, at any rate, I think we -- I
3 hope your Honor saw it this way, but I think we made a fairly
4 strong case that that money belonged to this young lady here.
5 And I think that money is -- ends up to be in that order, at
6 least Amar tells me that that's the case.

7 MR. BHACHU: It is on page 3, Judge, a reference to
8 the funds in the amount of \$17,380. What I would suggest,
9 rather than holding up our proceedings right now, is that
10 perhaps counsel and I can confer either towards the end of our
11 proceedings today or immediately following the proceedings and
12 see if we can't come to a resolution as to that issue here.

13 MR. GILLESPIE: That would be fine with me, your
14 Honor.

15 THE COURT: Do you want to set a date for that now?

16 MR. BHACHU: Judge, I think we could do that for
17 sure. Perhaps -- I think it wouldn't take very long, so if we
18 could do it maybe this Friday, if that's available to the
19 Court.

20 MR. GILLESPIE: Perhaps we can do it by agreement and
21 just --

22 THE COURT: If you want to set a date in case you
23 can't, and that way we can have a hearing and make a
24 determination.

25 MR. GILLESPIE: Friday one of us will be available

1 I'm sure.

2 THE COURT: Okay. Friday at 9:30. Preliminary order
3 of forfeiture, specifically the issue with respect to the
4 money confiscated during the execution of the search warrant.

5 MR. GILLESPIE: Thank you, sir.

6 THE COURT: I'm looking for guidance. What issue do
7 you wish to take up first?

8 MR. STEINBACK: Your Honor, before we entertain a
9 variety of issues -- and I have some suggestions there -- we
10 would like the opportunity -- in light of some recent health
11 circumstances which have arisen in connection with Mike's
12 case, particularly his hospitalization at Thorek and then
13 later treatments down in Kankakee -- to be able to supplement
14 the existing presentence report, as well as the supplemental
15 report recently received regarding Michael's health so that it
16 will follow him to the Bureau of Prisons and enable the Bureau
17 of Prisons to better evaluate and treat those issues.

18 The physical conditions which have since emerged
19 concern, among other things, something called a significant
20 pleural effusion, which, as I understand it, has to do with
21 the filling up of fluids of the left lung. And Michael had to
22 be taken to the hospital for the better part of two months
23 where a tube was stuck in his left lung to remove a variety of
24 fluids and to enable him to be able to breathe. That
25 condition also required hospitalization and treatment down in

1 Kankakee where Michael was placed on a series of antibiotics.
2 That condition has not completely cleared up. And in the
3 process, we believe that there's also the diagnosis of
4 hypertension and some diabetes. And so we would like the
5 records concerning his medical condition to reflect that and
6 for leave to be able to submit that to the probation office
7 and then to the Court so that it can be included in the
8 presentence report.

9 THE COURT: Government?

10 MR. BHACHU: No objection, Judge.

11 THE COURT: Okay. You're given leave to do so.

12 MR. STEINBACK: Now, your Honor, with respect to the
13 variety of matters that are before the Court, there are, of
14 course, guideline issues and then issues in mitigation and
15 aggravation.

16 I think that the guideline issues sort of lay out
17 into two categories. One would concern rather
18 fact-intensive-based guideline considerations concerning, for
19 example, leadership, whether, in fact, your Honor is going to
20 find Mr. Sarno responsible from an accountability standpoint
21 for certain acts that are alleged and were discussed during
22 trial. Those fact-intensive arguments we hope your Honor will
23 allow Mr. Gillespie to address.

24 And then there is the issue with respect to the
25 criminal history category, which is a mixture, in my judgment,

1 of law as it exists today, as it existed in 1996, as well as
2 3553(a) considerations. And I would like the opportunity to
3 address that issue.

4 MR. BHACHU: Judge, if I may kind of chime in? The
5 issue I think that is pretty well going to be the key driver
6 or may be the key driver in this case is if your Honor makes a
7 determination that defendant Sarno is a career offender. That
8 will, I think, potentially obviate other guidelines disputes
9 down the road, given the fact that there's a restricted
10 guideline range of up to 300 months in this case.

11 If Mr. Sarno is considered to be a career offender
12 and accountable for some -- for at least the robberies or the
13 robbery that the sentencing -- sorry -- probation office holds
14 him accountable for, his guideline range is 292 to 365 months.
15 So I would propose that we start with the issue of whether or
16 not Mr. Sarno is a career offender.

17 THE COURT: Okay. The government's -- well, I guess
18 the supplemental presentence investigation as well as the
19 government's position is that. So I'll let the government go
20 first.

21 MR. BHACHU: Judge, with respect to the issue of
22 whether or not Mr. Sarno is a career offender, I think the
23 answer is very clear from the guidelines under 4A1.2 that he,
24 in fact, is.

25 The issue that has been raised -- I think there's two

1 issues that the defendants have raised -- or the defendant I
2 should say -- has raised with respect to whether or not
3 Mr. Sarno is a career offender. One is whether or not he has
4 two prior convictions for a crime of violence. And the second
5 one is whether or not the current offense of conviction is, in
6 fact, a crime of violence.

7 With respect to the first issue, whether or not he
8 has two prior convictions for a crime of violence, the
9 contention made by the defendants is that his prior
10 convictions in the Infelise case and the Castaldo case should
11 be considered as one conviction. That request recognizes that
12 under guideline 4A1.2 as it's currently written, they would be
13 counted separately, I believe. Guideline 4A1.2 says that
14 sentences resulting from offenses contained in the same
15 instrument, charging instrument, or sentences that are imposed
16 on the same day are considered to be one offense or one
17 conviction. That's quite obviously not the case here. The
18 Infelise and Castaldo convictions arose from separate charging
19 instruments, and the sentences were imposed on different days
20 as well. So under the clear terms of section -- guideline
21 section 4A1.2, those sentences are, in fact, to be considered
22 separately.

23 The defendant suggests that that somehow poses an ex
24 post facto problem. That contention has been already rejected
25 by the Seventh Circuit in United States v. Demaree. Because

1 of the fact that the guidelines are advisory and because your
2 Honor has the discretion, if you wish, to impose a
3 non-guideline sentence even if Mr. Sarno is considered to be a
4 career offender, there is no ex post facto problem at all.

5 The second issue with regards to whether or not the
6 current offense of conviction is a crime of violence would
7 point towards the other -- I think some of the factual issues
8 that we have -- or have discussed in our papers; one, whether
9 or not Mr. Sarno is accountable for the arson activity during
10 the prior -- or during the instant crime of conviction or,
11 two, whether or not he's accountable for the robbery activity.

12 We would submit to your Honor that the defendant is
13 certainly accountable for the arson activity in this case
14 because he, in fact, is the one that commanded the arson to
15 take place. We have a series of facts that all point towards
16 demonstrating that the defendant is accountable for that
17 activity.

18 We have his visit to Vince Dublino in the summer of
19 2002, which demonstrates his involvement in the illegal
20 gambling activity, but also implies that he believed that he
21 was in a position of command and should be obeyed because of
22 who he was and what type of business he was in.

23 We also have the recording that was made of Sam
24 Volpенdesto. Sam Volpенdesto admitted his role in the arson.
25 He also admitted in that same recording that he did Michael

1 Sarno's dirty laundry. He also admitted that he had not been
2 paid upwards of \$20,000 by Michael Sarno for his prior work,
3 and that he also follows, in this sense, Michael Sarno's
4 orders.

5 In addition to that, you have the recording from Kyle
6 Knight and Kyle Knight's testimony. Kyle Knight, during his
7 testimony, established that Sam Volpенdesto actually did that
8 bombing at the behest of Michael Sarno because Vince Dublino
9 was putting gambling devices in locations where he shouldn't.
10 And his testimony was confirmed by the recording where he
11 actually says Sam Volpенdesto told him why it was he was doing
12 what he was doing. And the notion that somehow Sam
13 Volpенdesto was the person that was independently responsible
14 for conducting this bombing obviously is entirely incredible.

15 The fact that Mr. Sarno had a motive to conduct the
16 bombing due to his control of the gambling activity, that's
17 set forth in our papers; but I'll just touch on a couple of
18 highlights there.

19 The fact that Mr. Sarno was, in fact, in charge of
20 the gambling activity that was involved here is very clear.
21 The records that were introduced at trial showed that Casey
22 Szaflarski had machines at the 47th Street Grill, which was
23 the location that Mr. Sarno ordered Vince Dublino to stay away
24 from prior to the bombing. The records and interceptions in
25 this case showed that Michael Sarno was in contact with Casey.

1 There was an interception between him and Mark
2 Polchan in Goldberg Jewelers. And during that interception,
3 which took place I believe -- let's see. It was an
4 interception at -- yes, at Goldberg Jewelers between Mark
5 Polchan and Mr. Sarno. Mr. Polchan mentions the guy at No
6 Name, which was one of the locations where Casey Szaflarski
7 had machines located. Mr. Sarno tells Mr. Polchan, No, just,
8 ah, Casey told me a little something about it. And then Sarno
9 goes on to say, He's got one and we're going to get the whole
10 stop. Polchan tells Mr. Sarno, Tell him, tell him, tell him
11 get the whole stop, kick the guys out of there. And then
12 reaffirms again, Tell him get the whole stop, kick the guys
13 out of there.

14 The other fact that we know is Raymond Rossi called
15 Mr. Sarno for permission to install gambling devices at the
16 Lista Lounge. And in advance of actually having the
17 substantive call where they discussed placing gambling devices
18 at that location, there was a preceding call that took place
19 on Mr. Sarno's telephone where there was a reference again to
20 the guy with the H3 stopping by, a reference to Casey
21 Szaflarski, and the need to discuss business with Casey
22 Szaflarski.

23 The fact that the defendant Sarno controlled Casey
24 Szaflarski is also demonstrated by the fact that Casey
25 Szaflarski himself told one of his workers, John Scardina I

1 believe -- sorry -- Victor Sheehan, that he wasn't really in
2 control of where machines were being put. This is in
3 reference to a situation where Victor Sheehan was reluctant to
4 put machines in a particular location because he thought that
5 there was going to be video monitoring of that location and he
6 didn't want to put machines in there because of the risk
7 involved. And Casey told him it wasn't his choice as to where
8 to put machines. John Scardina is the individual that
9 testified about the territorial nature of this business; the
10 fact that he was told to stay away from Cicero.

11 The territorial nature of this business is further
12 emphasized by the fact that Vince Dublino is visited by this
13 man, by the defendant, who tells him to stay away from a
14 particular stop, as if to say it was his territory. He was
15 the person that was going to decide what type of business was
16 going on there.

17 And then finally, Judge, with respect to Mr. Sarno's
18 involvement, in addition to his motive for participating in
19 the bombing, we have the interception at Goldberg Jewelers.
20 That interception taking place shortly after Kyle Knight was
21 charged with providing explosive materials for the bombing.
22 And we have a closed-door meeting between Mark Polchan and
23 Michael Sarno in the business at that time. The government
24 obtained the shreds from the shredder, as you'll recall, and
25 the two men were conferring about articles relating to the

1 bombing. Of course, the fact that they were conferring in a
2 closed-door session about those articles and then thereafter
3 Mr. Polchan shredded them is further evidence of the two men's
4 involvement in the bombing, particularly so since neither man
5 was actually mentioned in the charge that was lodged against
6 Mr. Knight or in the newspaper articles that followed.

7 So all of those factors, Judge, demonstrate that
8 Mr. Sarno was, in fact, a participant and commanded the arson
9 activity that took place and demonstrates that, as to
10 Mr. Sarno, the conviction is a crime of violence. That alone
11 would be sufficient in our view to demonstrate that
12 Mr. Sarno's prior -- current count of conviction is, in fact,
13 a crime of violence.

14 And then there's also the information that we have
15 provided in our papers with respect to his involvement and
16 knowledge of robbery activity.

17 With regard to that, Judge, he was not personally a
18 participant in these robberies. But the guidelines permit
19 accountability where somebody enters into a joint agreement or
20 a joint undertaking with others. The Seventh Circuit
21 requires -- and we would ask your Honor to find -- specific
22 findings of fact as to this issue. And I would note that
23 because in recent cases, the Seventh Circuit has admonished us
24 prosecutors to make sure that such findings of fact are, in
25 fact, made by the district courts where we proceeded under a

1 theory of joint accountability.

2 There are three factors that the Seventh Circuit
3 looks at in this regard. One, it asks for the finder of fact
4 to consider the scope of the criminal activity the defendant
5 agreed to jointly undertake. Two, whether the conduct of
6 others was in furtherance of that joint criminal activity.
7 And, three, whether the conduct was reasonably foreseeable to
8 the defendant in connection with the joint criminal activity.

9 Now, the probation office is in agreement as to one
10 of the robberies, the LD Jewelers robbery; that, in fact,
11 Mr. Sarno was accountable with respect to that robbery.

12 The point of departure, I think, that the probation
13 office had with regards to the other robberies that were
14 charged and proven at trial is that the defendant didn't seem
15 to have any actual knowledge of those robberies through the
16 proof that was introduced.

17 As we mentioned in our papers, the reasonable
18 foreseeability component, that third prong if you will, does
19 not require actual knowledge of the actions of
20 co-conspirators. And we cited United States v. Aslan, 644
21 F.3d 526, at page 537, which was a Seventh Circuit decision
22 that came out last year.

23 But let me touch, if I can, upon some of the evidence
24 that demonstrates first -- or actually demonstrates all three
25 of those factors, namely that Mr. Sarno agreed to participate

1 in the affairs of an enterprise through a pattern of
2 racketeering activity that included robbery. And I think to a
3 lesser extent obviously the robberies that were committed by
4 these individuals, we would submit that the evidence
5 demonstrated that those robberies were in furtherance of the
6 joint criminal activity and that, in fact, was reasonably
7 foreseeable to the defendant.

8 Our papers demonstrate that Mr. Sarno was a person
9 that was in a position to actually sanction robbery. With
10 respect to that issue, your Honor heard testimony of Mark Hay
11 who indicated that he actually went to Mark Polchan and
12 discussed with him the issue about robbing a dice game which
13 occurred in the winter of 2002. And in that situation,
14 Mr. Polchan sought the approval of Mr. Sarno to actually
15 conduct that robbery. It was not permitted; and for that
16 reason, Mr. Hay did not engage in the robbery.

17 That -- there was a lot of back and forth, your Honor
18 may remember, at trial about what we could elicit from Mr. Hay
19 about that issue, about why he was prepared to follow
20 Mr. Sarno's direction. Because, in your Honor's estimation,
21 one of the issues presented there was, well, why would it be
22 the case that Mr. Hay would follow Mr. Sarno's direction. The
23 reason why Mr. Hay would be compelled to follow a direction
24 issued by Mr. Sarno is because it would demonstrate enterprise
25 and it would show connectivity and structure between the

1 defendants. And that's precisely what it did do. Mr. Hay did
2 not rob that dice game. He followed the instructions that
3 were sent down to him through Mr. Polchan.

4 And there are other factors also that demonstrated
5 that Mr. Sarno was -- had agreed to jointly undertake a
6 criminal activity that involved robbery.

7 We also had the LD Jewelers robbery. In that
8 instance, there was testimony that Mr. Polchan had used
9 services of Mr. Sarno to intercede with respect to the owner
10 of LD Jewelers to prevent him from asking questions about who
11 was responsible for the robbery; and that that had been
12 successful. You might recall from the LD Jewelers robbery
13 that in that situation, the owner's wife was tied up, the
14 establishment was robbed and then the jewels in that instance
15 that were stolen were actually moved in Florida. Mr. Polchan
16 had the relationship with Lenny DeGrado and, for that reason,
17 did not feel comfortable in actually moving the jewels himself
18 here in the Chicago area.

19 There's also interceptions that reflect that
20 Mr. Sarno had knowledge of the activities and had the ability
21 to control the activities of the enterprise as they related to
22 robbery.

23 With respect to the recordings that we mentioned in
24 our papers with Anthony Baldassano, Mr. Baldassano calls up
25 Mr. Sarno, reports to him that his house has been robbed and

1 that he asks him to check with his shops to see if any of the
2 goods taken had ended up there. The immediate call that
3 Mr. Sarno places immediately after receiving that call from
4 Mr. Baldassano is a call to Mr. Polchan asking if anybody has
5 brought these goods to his location. And Mr. Sarno --
6 Mr. Polchan indicates that has not happened. And Mr. Sarno
7 says, I wish it had. Mr. Sarno wishes those goods had shown
8 up at Goldberg Jewelers because if they had shown up, then
9 Mr. Sarno could have had them returned to Mr. Baldassano.

10 Mr. Polchan also says during an interception where
11 he's talking about the prospect of how -- how difficult his
12 life is and during that interception that we mentioned in our
13 papers, he talks about how he's worried about getting arrested
14 every day. And in the context of doing that, he also mentions
15 that he has to take care of his boss as well. His boss is
16 nobody else than Mr. Sarno.

17 There is a contention from the defense side that he
18 must be talking about somebody else. There is nobody else
19 that fits the bill of boss. Mr. Sarno is the one that we have
20 seen throughout the case is the one that says, I'm the one
21 that thinks for other people. If you'll recall that
22 interception between him and David Kantowski. In that call he
23 says, you know, I -- let me do the thinking. He's the guy
24 that's in control. He's the guy that orders the bombing.
25 There is nobody else that fits the bill for someone that would

1 qualify as Mr. Polchan's boss.

2 We also have interceptions where Mr. Polchan is
3 actually paying money to Mr. Sarno in Goldberg Jewelers. A
4 wad of cash is delivered in April of 2007, perfectly
5 consistent with the testimony of James Wagner. James Wagner
6 testified in the Family Secrets case. We attached his
7 testimony as one of our exhibits. And Mr. Wagner explained
8 there are concepts such as street tax that, where you operate
9 illegal activity, you're obligated to pay a percentage of your
10 ill-gotten gains as street tax if you're associated with an
11 Outfit member.

12 These things all demonstrate, Judge, that Mr. Sarno
13 is accountable for the robbery activity. The fact that he may
14 not have known about a particular robbery does not mean that
15 he's not accountable for it as part of the joint undertaking
16 that he agreed to join.

17 Those are the issues I think that clearly pertain to
18 the career offender issue in particular, whether or not the
19 prior -- or, sorry -- the current offense of conviction is, in
20 fact, a crime of violence.

21 MR. STEINBACK: Your Honor, it's for those reasons
22 that I believed the issues with respect to the robberies and
23 the arson, as well as the guidelines that pertain to them, are
24 fact intensive and are really predicate for the argument with
25 respect to criminal history. That's why I suggested that

1 those factual disagreements need to be resolved before we can
2 go on to the next issue. And I believe Mr. Gillespie is
3 prepared to address what has been raised.

4 MR. GILLESPIE: I am, your Honor.

5 THE COURT: I can see you can hardly wait.

6 MR. GILLESPIE: With the Court's permission, I'll
7 address those issues. And Mr. Bhachu has covered just about
8 all of the areas that I intended to cover at any rate. So
9 I'll just stick with my script and proceed.

10 I think -- we don't have a lot of disagreement, if
11 any at all, what the evidence was at trial, the prosecution
12 and I. We do have a great difference as to what you can take
13 from it, what conclusions you can make from it, and the way he
14 characterized it. I mean, but what actually was said at trial
15 and who said what, we don't have much of a disagreement. And
16 I know your Honor listened as carefully as -- as could be to
17 all of this trial and took notes throughout. If we did have a
18 disagreement, you know what was said. And at the end of the
19 day, you will make the determination as to what those facts
20 and what that testimony means.

21 The government has contended here in a very broad
22 sweep right from opening statements that Mike Sarno is the
23 boss; everything that was done here by every one of the
24 individuals that have been charged here, all of the deeds that
25 they were involved in, running the gamut from scandalous and

1 craven to run-of-the-mill criminal activity, activity such as
2 armed robberies, knifing people, burglaries, the whole kit and
3 caboodle, Mike is in for a penny, he's in for a pound; he's
4 responsible for all of that.

5 The probation department has concluded that basically
6 for guideline purposes, Mike is responsible at sentencing here
7 for the gambling, the arson and one of those robberies that
8 they determined to be reasonably foreseeable.

9 We disagree with those conclusions; not with the
10 underlying facts, but with those conclusions.

11 Ordinarily, your Honor, I think when there is such
12 disagreement, this Court would look to the jury verdict and
13 make a determination from the verdict what did the jury
14 determine was the conduct that they attributed to the
15 defendant. I know in this case, that task falls upon you.

16 Count One in this indictment, as you're well aware,
17 included all of that nefarious activity that we're talking
18 about, from armed robberies, knifings, all the way down to
19 gambling. And Count Two that Michael is charged with charged
20 him with the very same evidence -- or the very same acts in a
21 gambling conspiracy. And it's a pretty good guess, if your
22 Honor was to look at the verdicts, you could conclude -- a
23 reasonable conclusion indeed from the evidence in that
24 verdict -- that this jury found Michael guilty of being
25 involved in gambling.

1 They did not make a determination, nor do they have
2 to make a determination or are they called upon to make a
3 determination, as to what other predicate acts they found
4 attributable to him. That's the nature of that charge.
5 That's the nature of this conspiracy to commit racketeering.

6 Unlike the other defendants in this case, the
7 prosecution did not charge Mike with hard counts of the arson
8 or substantive counts of the arson or those armed robberies,
9 so you don't have the luxury -- and, again, it's a luxury; you
10 at the end of the day make the decision -- but you can't look
11 to what the jury was thinking or what the jury attributed to
12 Mike regarding the arson.

13 Now, I have a few things to say about that. One is,
14 it's their prerogative. They get to decide the charges.

15 Two is, they're pretty smart folks. They decided
16 these charges for a particular reason. There would had to
17 have been -- and God knows there was -- some thoughts that
18 went into how to charge Mike Sarno in this.

19 And the third thing I know about that, as I said, you
20 can't look to those verdicts to find out what the jury was
21 thinking. So, unlike with a lot of the other defendants, you
22 have to look and you have to make determination from the facts
23 and the evidence as you heard them what is reasonable to
24 conclude regarding the evidence in this case, what is
25 reasonably foreseeable for Michael to be charged with for him

1 to be sentenced on.

2 I'm not going to give you my closing argument again
3 here today. You sat through it once. You listened to it.
4 Our position papers clearly indicate how we strenuously
5 disagree and we strenuously disagreed with -- to the jury that
6 much of the activity in this case cannot be attributed to
7 Mike.

8 Counsel went over and gave his opinion about a lot of
9 the arson evidence, what he took from that arson evidence. I
10 don't agree with that, and I've indicated to your Honor why I
11 don't agree with that in closing argument. I indicated to
12 your Honor why I don't agree with that in our position papers.
13 But I know your Honor has listened to that evidence, not
14 necessarily his characterization of that evidence, but you
15 listened to that evidence. You read those papers. And I know
16 from previous sentences that occurred in this case generally,
17 your Honor probably has made a determination regarding the
18 arson and Mr. Dublino and all of the evidence that related to
19 that arson.

20 What is most important and what I'd like to address
21 with the Court here today is this robbery evidence. That
22 evidence, as counsel has indicated, not only impacts the
23 career offender aspect of it, but it impacts the sentence that
24 you will -- the sentencing guidelines that you will give to
25 Mike Sarno. And that's where I would like to spend a few

1 minutes in addressing your Honor on those facts because I
2 think that that area of the case is crucial in your
3 determination as to what the appropriate sentence is here. In
4 that area of the case, I couldn't -- I disagree with
5 Mr. Bhachu, as we have on many occasions about lots of areas
6 in the case, but this particular area in the case, I
7 strenuously disagree with his conclusions about what that
8 evidence was and what your Honor should determine from that
9 evidence.

10 The probation department -- counsel has basically
11 said, as I indicated, he's in for all of them; he knew about
12 all of them or he should have known about all of them; he knew
13 about the general scheme about all of them and there's
14 evidence to indicate that he was aware of the robberies. The
15 probation department has indicated to your Honor the L and D
16 Jewelry he should be responsible for. As I indicated, we
17 disagree. And I'd like to discuss that with your Honor for
18 the remaining few minutes that I have.

19 There were five weeks of trial here. One full week
20 was related to these robberies. You know from that testimony
21 that years of investigation went on by some of the best law
22 enforcement agencies in the world concerning these robberies.
23 They were all over these robberies. All types of evidence was
24 presented to this jury and your Honor heard concerning these
25 robberies. All kinds of forensic evidence. Nothing -- not

1 one bit of forensic evidence, not any of this CSI type of
2 stuff that we see and hear about indicated --

3 THE COURT: You watch that?

4 MR. GILLESPIE: I don't, but my wife does and I have
5 to hear it from the next room.

6 But, at any rate, not one bit of it is attributed to
7 Mike.

8 We had phone evidence. None of that phone evidence
9 has -- tells you anything about these robberies at all
10 involving Mike. Surveillance, GPRs or GPSs or whatever they
11 are in his car, following him, nothing about the surveillance
12 over all of that time. Wires, wires up on phones, wires up in
13 Goldberg Jewelers. None of that. Nobody talks about Mike
14 being involved in these robberies.

15 Then we have a search of his house. They go out
16 there and they spend a whole day out there with a whole army
17 of federal agents and they go over that place with a
18 fine-toothed comb. And there's jewelry there and there's
19 records there and there's money there. Nothing, not one
20 scrap, not one pinky ring, nothing is attributed to any of
21 these jewelries.

22 As I indicated, the tapes, nobody on the
23 tapes that -- I think everybody has to agree, nobody knew
24 those tapes were going on -- nobody knows -- on any of those
25 tapes is Mike's involvement in these robberies that evidence

1 was presented to this jury and Court concerning ever brought
2 up.

3 Then we had the testimony of the inside guys that
4 committed the robberies. We not only had all of the forensic
5 type evidence, but we also had the inside guys that come in
6 here and testify. And they told you Michael was never
7 involved in the planning of any of the robberies. He was
8 never involved in the splitting up of any of the money of any
9 of the robberies. No street tax was put aside for Michael --
10 this supposed street tax business -- regarding robberies.

11 Mr. Hay testified that on two occasions while he was
12 at Goldberg Jewelers, where he hung around apparently night
13 and day for forever, he saw Polchan give Mike Sarno two
14 envelopes. My recollection of that testimony is he didn't
15 know how much was in it or what it was for. But we do know --
16 well, he opined that it might be for street tax. But we do
17 know it wasn't for any street tax that had anything to do with
18 the robberies. He never said that, and it's not a fair
19 conclusion to be made. They never put anything aside for
20 street tax for those robberies. If they did a score, these
21 rascals, they split it however many ways were involved in it.
22 If there were five people involved, there were five splits;
23 that is, unless they were stealing from each other. That's
24 the way the evidence was presented regarding those robberies.
25 There was no street tax.

1 The one other time we have evidence of Michael
2 getting money, it's on tape. He gives Polchan some money.
3 And guess what? Polchan gives him some back. We know from
4 the evidence that there was gambling activity between the two.
5 Why is it reasonable to infer that that was street tax or it
6 had anything to do with the robberies? I submit to your Honor
7 that it isn't.

8 What it comes down to, what the entire evidence
9 concerning these robberies comes down to, is this fellow Hay.
10 When you shake the tree and you're all done, what you're left
11 with -- I submit to this Court, what they're left with is this
12 fellow Hay and his three "my guy" statements. That's what
13 this case is about. His three "my guy" statements.

14 First -- so I'd like to talk about Hay. Now, I've
15 been doing this for a while, and I know your Honor has seen
16 them come and go for a while here; and I submit that very few
17 individuals have ever walked into a courtroom that have more
18 credibility issues than Mr. Hay. You would have to go far and
19 wide to find somebody that brought more credibility baggage
20 than that individual. That's all I need to say about that.

21 We also know that his three "my guy" statements
22 that -- which I'll address in a minute -- which the government
23 has made a big deal out of, they contend draws Mike into these
24 robberies. We also know that none of them are corroborated.
25 None of them. Not one of them is corroborated by a tape. Not

1 one of them is corroborated by another individual. Not one of
2 those "my guy" statements is corroborated. And we know that
3 in all the time that he was talking to the government, all the
4 time he was talking to the FBI, he never once told them
5 Polchan referred to Sarno as "my guy." The first time he said
6 that was in the courtroom. That was a stipulation. So that's
7 what we -- that's the hanger which they basically put this
8 cloak on to try to bring Mike underneath for these robberies.

9 The first "my guy" statement is, My guy said he'd be
10 pissed if he found out you were using Sammy for some kind of
11 robbery involving baseball cards. Now, once again, I -- it's
12 uncorroborated, this guy's credibility issues. But how does
13 that mean that Mike was involved in the robberies; that if he
14 found out he would be pissed? How in the world does that "my
15 guy" statement indicate in any fashion that Mike could foresee
16 or was involved in those robberies? The King's English tells
17 me, your Honor, just the opposite. If he did know, he would
18 be angry.

19 The second "my guy" statement is the one that they
20 put a little more emphasis on. Not a little more. A great
21 deal more emphasis on. And that's the protect the gambling
22 game that Polchan said he -- this was Hay's testimony. Hay
23 said him and Formato -- him and Formato -- decided that they'd
24 go to Polchan. And Polchan said he'd go to my guy to find out
25 if the game was protected. That's -- he didn't say, I'll go

1 to my guy to find out if we can rob this game or I'll go to my
2 guy and tell him how this robbery was to occur and when it was
3 to occur and can we do it. Hay says, with all his credibility
4 issues -- no time, no place, no indication of where this
5 occurred -- he said Polchan said he'd go to my guy and find
6 out if the game was protected. Polchan comes back and says my
7 guy supposedly said the game was protected. That's what they
8 want you to basically sentence Mike as being -- having these
9 robberies reasonable -- incidentally it was not a robbery that
10 was presented to this jury. It wasn't a robbery that
11 occurred.

12 And Mr. Formato came into this courtroom -- Detective
13 Formato. He was supposedly involved in this. And he sat up
14 here and testified for half a day or whatever -- however long
15 he was here -- and he did not say one word about this. He did
16 not say one word about this game or one word about this
17 proposed robbery. How could that be? They didn't forget to
18 ask him, your Honor. He did not say one word about this, nor
19 have they submitted anything at this sentencing hearing
20 indicating that he would say anything about this. In my
21 recollection, there's not a piece of evidence that I know of
22 that the game actually occurred at that location. So how
23 could that mean Mike is responsible for robberies, a robbery
24 that didn't occur, that Formato does not corroborate on a "my
25 guy" situation? How could that be?

1 And the third one, I think the most serious one, the
2 most serious because probation has attributed these robberies
3 to Michael, on the L & D Jewelry. And that's very important.
4 Not counsel's conclusions of what happened there, but what the
5 evidence was regarding the LD Jewelry.

6 Basically, as I recall the testimony, Hay testified
7 that Polchan was concerned because Lenny DeGrado thought he
8 was involved in this robbery of his store. And he went to --
9 Polchan supposedly went to Mike. Hay says my guy said he was
10 going to go to talk to Lenny DeGrado and basically tell Lenny
11 DeGrado Polchan had nothing to do with it. That's the
12 testimony concerning that "my guy." Mike was supposedly going
13 to Lenny DeGrado. He wasn't going to him to say, Polchan did
14 the robbery; my gang did the robbery; we were involved in the
15 robbery. He was supposedly to go -- and the inference from
16 that, I think, is clear. He was supposedly to go to Lenny
17 DeGrado, if you believed Hay -- undated, unsourced,
18 uncorroborated -- if you believed him, he was supposedly to go
19 to Lenny DeGrado and say, you're claiming Polchan did this; he
20 had nothing to do with it. That's what I got out of that "my
21 guy." That's -- nothing about, from Hay, that Mike was
22 involved in the robbery. This is after the fact.

23 Well, we heard -- Ms. DeGrado was in the courtroom.
24 She didn't say anything about that. Not a word. She didn't
25 identify Michael in this courtroom. And we know that the

1 government didn't call Lenny DeGrado. It's, again, their
2 prerogative. But we know that they talked to him, and we know
3 Lenny DeGrado said he never talked to Mike; that Mike never
4 said anything at all like that to him. So I don't know what
5 it means. I don't think it means what they say it means
6 anyway. I don't think counsel's inference of what it means is
7 fair. And I don't think it occurred at all. The witness says
8 it didn't occur. The owner of the store who they interviewed
9 say -- says it didn't occur at all.

10 But then we have this Baldassano thing. Mike's
11 mechanic calls him up and says, My house just got robbed. And
12 if you read that transcript, at one point he says, I know you
13 know, and then they talk over. The inference that's fair to
14 be made of that is that -- not that Mike owns the stores or
15 Mike owns all of the Goldberg Jewelers. They searched
16 Goldberg Jewelers from top to bottom. Tens of thousands of
17 records. You'd think something would be in there, something
18 would be in there that would connect that store to Mike Sarno.
19 Nothing. Not a thing. They searched his house, as I said,
20 top to bottom. Nothing that connects it to Goldberg Jewelers.

21 He says, Mike, you know people in the pawn shop
22 business; check and see if any of my property that just got
23 stolen is there. And he does. A policeman walks in during
24 the same time frame, does the same thing. Hey, did you see
25 any stolen property from so-and-so. Nothing unusual. And the

1 conclusion counsel asks you to make is not fair, and I don't
2 think it's reasonable.

3 The final thing is this boss situation. Now,
4 Mr. Bhachu is a pretty smart guy, and he has his opinions. As
5 my grandmother used to say, opinions are like noses;
6 everybody's got one. But the facts of this case don't exclude
7 the whole world from being his boss. There's nothing in this
8 case that excludes -- this had to be Mike Sarno because he's
9 the only one that could be his boss. This coming from the
10 prosecutor. Well, he's got an opinion. That's good. It's
11 not -- it's not an inference that has to be taken from that or
12 should be taken from that. And even if it's taken from that,
13 why is it taken that he's the boss of the robberies? We know
14 they had a relationship regarding the gambling. I don't think
15 those inferences are fair.

16 In conclusion, your Honor, the one area of this case
17 that I find the most problematic because of the real unfair
18 twisting or reading of the evidence is regarding this robbery
19 and this robbery gig. I think with the effort that went into
20 it, the time that went into it, they would have come up with
21 evidence if it was there. They didn't. What they come up
22 with is asking you to take inferences from neutral -- if that,
23 if believable -- neutral statements, neutral facts and make a
24 leap of faith that I don't think is warranted. So regarding
25 that area -- and I think it does have a very important impact

1 on the sentencing -- I'd ask your Honor to conclude, which I
2 think reflects the reality of this case and the evidence in
3 this case, that Mike Sarno didn't have a darn thing to do with
4 the robberies in the case.

5 Thank you, your Honor.

6 MR. BHACHU: May I respond briefly, Judge?

7 THE COURT: Brief.

8 MR. BHACHU: Thank you, Judge.

9 First of all, with regards to this issue, the issue
10 about being a career offender, if your Honor finds the
11 defendant was responsible for the arson, that is enough for
12 purposes of your decision to make him a career offender.

13 But I want to touch on these issues about the
14 robberies. First of all, this issue about, well, you didn't
15 find proof when you searched Goldberg Jewelers, et cetera. We
16 had wire interceptions in Goldberg Jewelers in 2007. All the
17 robberies took place in an earlier period of time. By the
18 time we were up on that wire, many of the people that were
19 involved in those robberies had been either arrested or,
20 alternatively, were working for the government.

21 There is also talk about Lenny DeGrado; that the
22 government chose not to call Lenny DeGrado at trial. Well,
23 the testimony at trial was also that Lenny DeGrado was
24 involved with Mark Polchan in potentially trying to rob the
25 jewelry salesman that visited his store in 2001. What was the

1 government going to do, call a guy that was in fact in league
2 with Mark Polchan as a witness at trial?

3 The other fact is and that counsel -- they've seen
4 Lenny DeGrado's prior 302s. His story changed over time.
5 When he was initially approached before Mark Polchan was
6 arrested, in June of 2008, he denied being contacted by
7 anybody about the robbery, which is true. But he also denied
8 having any clue who was actually responsible for the robbery.
9 After Mark Polchan was arrested, his story changed and he said
10 he always thought that Mark Polchan was involved in the
11 robbery and then gave us specified reasons for why he actually
12 thought Mark Polchan was involved.

13 When he was asked about Mr. Sarno, he grew very
14 agitated. That's in the 302s that counsel has. He was, in
15 the words of the 302s, very angry and very apprehensive and
16 asked why he had to mention an Outfit guy in his statement.
17 He acknowledged that he knew Michael Sarno is a powerful
18 member of the Chicago Outfit and that he'd actually met
19 Mr. Sarno through Mark Polchan.

20 When he was asked at the very end whether or not
21 Michael Sarno had sent him a message, he told us to, quote,
22 read between the lines and, quote, I don't want to get anyone
23 else involved that doesn't have anything to do with it.

24 After that, in September of 2008, he was interviewed
25 again. And then he went on to tell us that he had met Sarno

1 several times after the robbery, five to six times; and one of
2 those times was at his brother's jewelry store, which implies
3 obviously, Judge, that there was something there that caused
4 him to be particularly apprehensive. And the other fact is,
5 he was probably, you know, based on the evidence that we heard
6 at trial, potentially in league with Mr. Polchan as well.

7 The fact that Mr. DeGrado denied receiving a message
8 from Mr. Sarno doesn't, I think, in any way take away from the
9 testimony of Mr. Hay, whose testimony was corroborated in
10 multiple ways. Mr. Hay gave his statements to us, Judge, well
11 before we had a bug up in Goldberg Jewelers, well before we
12 actually started making recordings of Sam Volpendesto. When
13 he first started giving statements to us, many of the
14 statements that he gave to us were corroborated by the
15 subsequent recordings that were made, by the other
16 interceptions that we made in Goldberg Jewelers.

17 There's this talk about, well, he used the words "my
18 guy" at trial. Well, he gave that information prior to trial
19 about Mr. Sarno's involvement in terms of sanctioning
20 robberies. He may not have used the exact phrase "my guy" as
21 opposed to identifying Mr. Sarno by his other monikers, such
22 as Large Guy. But that doesn't detract from the fact that
23 prior to that point in time, he had given that evidence
24 before. If he had for the first time at trial identified
25 Mr. Sarno as being the one that had been the intermediary and

1 interceding with regards to Mr. DeGrado, we would have heard
2 about that at trial.

3 To say then that his credibility is -- you know, is
4 something that you can't rely upon, you can because he was
5 corroborated in multiple ways through other recordings.

6 There was also some talk about, well, there's no
7 records found in Goldberg Jewelers. Well, we didn't find much
8 of any records in Goldberg Jewelers about anything when it was
9 searched. Mr. Polchan didn't keep records over there. He
10 didn't have records of his own financial transactions for the
11 most part at Goldberg Jewelers.

12 And then, finally, there's this issue about my
13 opinion about whether or not Mr. Sarno is Mark Polchan's boss.
14 It's not my opinion. It's based on the evidence in this case.
15 You know, who else was Mr. Polchan's boss? We had a pole cam
16 in his business. We had a video running in his business.
17 There wasn't anybody else that showed up there who Mr. Polchan
18 was like, oh, hey -- you know, treated in a deferential
19 manner.

20 The person that would show up -- you heard repeated
21 testimony from people -- that would show up at Goldberg
22 Jewelers over the course of the enterprise's activity would be
23 Mr. Sarno. Mr. Sarno would receive cash payments from
24 Mr. Polchan. People were not included in the conversations
25 between Mr. Polchan and Mr. Sarno, but they were kept alone.

1 They were apart. There was no evidence in any form that there
2 was some other boss person out there that Mr. Polchan was
3 reporting to other than Mr. Sarno. They had a long-standing
4 relationship. And that that -- there's no other reasonable
5 conclusion to be drawn when somebody says, I have to take care
6 of my boss. He's not talking about his wife. He's talking
7 about Mr. Sarno.

8 So for those reasons, Judge, we'd ask that you find
9 Mr. Sarno accountable for both the arson activity and the
10 robbery activity as well.

11 THE COURT: Well, the difficulty, of course, is that
12 we're talking here in inferences. There is, as defense
13 counsel has pointed out, very little direct evidence of
14 anything. In that regard, I have to say that while true, it's
15 not surprising. There was direct evidence that the defendant
16 was extremely careful about giving up any form of direct
17 evidence. He used multiple phones. He had a code language
18 with people who called him to tell them in code -- why he
19 would feel that was necessary we can only infer -- when not to
20 speak on that phone but to call him back on another phone.
21 "Call Alice" I think was one of the things he would say.

22 At one point, he actually gives up a little bit of
23 direct evidence in which -- when he tells someone who is
24 calling him, oh, my God, don't use those names; don't use
25 names in your conversations with me; believe me, I've got real

1 good reasons for saying that. And the caller actually
2 apologized, if I remember correctly, saying how sorry he was
3 to have actually used somebody's real name, which brings me to
4 another point.

5 You didn't hear anybody's real names in those
6 recordings. Everybody had nicknames. They were all referred
7 to in one way or another; the other guy, the guy in the --
8 with the Hum- -- Hummer automobile.

9 MR. BHACHU: H3, the guy with the H3.

10 THE COURT: The guy on such and such street, 18th
11 Street, Goldberg. Who is Goldberg? There wasn't any Goldberg
12 in the case. That name appears all over the place. Everybody
13 uses it.

14 MR. GILLESPIE: I think it was Goldberg Jewelers.

15 THE COURT: Yes. But who was Mr. Goldberg? There
16 were references to Goldberg doing this and Goldberg doing that
17 and Goldberg's place, but there was no Mr. Goldberg. It was
18 shorthand for Mr. Polchan. So that lack of evidence doesn't
19 surprise me in the least.

20 It's clear that this defendant, as well as the others
21 but particularly this defendant, was going to great pains to
22 limit his direct contact with anything that might incriminate
23 him and was acting at all times as if he was under
24 surveillance, which, of course, he actually was. Only the
25 surveillance, it turns out, was much more effective than he

1 gave credit.

2 The inferences, as we tell the jury, have to be
3 reasonable and they have to be based on the facts in the case.
4 I find that there are many facts that lead to the inescapable
5 inference that Mr. Sarno was both accountable for and, in
6 several very important ways, in control of the robbery
7 activities that the criminal enterprise soldiers, if you will,
8 were involved in. It would take a tome to list all of those
9 here. It would take a recitation of the evidence during the
10 four weeks of testimony. And I'm not going to do that.

11 But I do find that there is clear evidence, in my
12 opinion, that the defendant ordered and directed the bombing
13 of C & S Amusements; that he is accountable for the robberies
14 engaged in by his co-defendants. He knew of them. He
15 sanctioned them. He had control at least to be able to say,
16 no, those people you can't rob. He had a say as to who did
17 what, at least to the extent of limiting the role that Sam
18 Volpendesto would have in the robberies. All of which makes
19 perfect sense that this would be very important to him or
20 anyone in his position because if you've been convicted twice
21 already -- my goodness, for part of the time he was still I
22 believe on court supervision -- so you know how it happens.
23 If one of those robberies fails and somebody gets arrested,
24 that person becomes a potential witness against you. It makes
25 perfect sense for Mr. Sarno way up the ladder in this

1 conspiracy to be worried about what happens to the little guys
2 during these robberies. And why would he be worried about it
3 at all? Why would he care if it weren't for the fact that
4 they could turn out to be evidence against him and his
5 involvement?

6 He also had quite effective power to provide
7 protection for, in one case, Mr. Polchan from possible
8 retaliation by victims who suspected him of having been behind
9 one of the robberies.

10 It's clear to me that after you look at all of the
11 evidence in the aggregate, draw all the reasonable inferences
12 that come from that evidence -- the testimony, the actions of
13 the defendant in going in secrecy to see co-defendant Polchan
14 when news media events, reports, begin to show that there's a
15 leak in the organization. Why would he care? Why would he
16 bother to go speak to Polchan, go into a room, view a document
17 which Polchan then shreds which is then recovered by the FBI,
18 put together and shown to be a document which informs them for
19 the first time apparently that they likely have a leak in
20 their organization? -- the reasonable inference is that he
21 would only care about those things if he was involved in the
22 organization.

23 One small fact I recall that hasn't been mentioned
24 here, but for some reason you recall some things better than
25 others, was Mr. Polchan's preparation of Mr. Hay the first

1 time he was to introduce Hay to the defendant, Mr. Sarno; how
2 he described to Hay how he should act in front of Sarno, how
3 he should be quiet, how he should be careful, clearly --
4 clearly -- considering this a very important person.

5 Now, I sentenced Mr. Polchan previously; and I can
6 tell you, he's not a person, from all that I learned about
7 him, who is easily impressed by anything but raw power. He
8 was clearly impressed by Mr. Sarno. At least that's what he
9 expressed to Mr. Hay.

10 Based upon all of these circumstances, the inferences
11 to be drawn from them, I am well-satisfied and convinced that
12 the government has met its burden in establishing that
13 Mr. Sarno is accountable in the legal sense of the word for
14 the robberies engaged in by his co-defendants, knew of them,
15 sanctioned them, controlled them to a great extent; and that
16 they were -- these robberies were clearly within the scope of
17 the RICO conspiracy and actually known to him to some extent
18 and reasonably foreseeable to him when not actually known to
19 him.

20 As I indicated previously, I find that the evidence
21 is more than sufficient to establish that Mr. Sarno ordered
22 the bombing at C & S Amusements. He had the motive. He had
23 previously threatened the owner of C & S Amusements. They
24 were in direct conflict over the territory in which the
25 gambling machines, the illegal gambling machines, were being

1 deployed. Sam Volpendesto's rambling conversations implicate
2 him convincingly.

3 I draw different inferences than those urged by the
4 defense with respect to Mr. Sarno's conversations when he
5 says, I didn't get blank from Sarno. The defense concludes
6 that that is a statement that he was not actually getting
7 anything from Mr. Sarno. I think when you read all those
8 statements in context, what he was complaining about was not
9 that he wasn't getting anything from Mr. Sarno or didn't have
10 anything to do with Mr. Sarno. What he was complaining about
11 was the fact that Mr. Sarno was a lousy supervisor and a
12 terrible boss because he paid him in small little dribbles of
13 nothing instead of giving him a piece of the action, which, if
14 I recall correctly, is what he said a man wants when he takes
15 chances like he took; a piece of the action. A piece of
16 something I think he said. Instead, he was getting gas money
17 and an automobile at one point.

18 So my inferences, I think, parallel those of the
19 jury. It's clear that the jury believed in the credibility of
20 the co-defendants who testified, the government informants and
21 cooperators, or they would not have convicted all of these
22 defendants. And the Court is in sync with the jury in those
23 determinations as well.

24 The testimony of the main witnesses in this case,
25 however suspect their characters are, is reinforced and

1 corroborated by dozens of bits of actual concrete evidence as
2 to how things happened, when they happened. All of that put
3 together weaves a convincing account which has Mr. Sarno as a
4 person who is in control of much of the action and certainly
5 accountable for virtually all of it.

6 In addition to that, I think the other elements with
7 respect to the career offender status are met here. The
8 defendant is clearly over the age of 18 years at the time of
9 the commission of the current offense. He has two prior
10 felony convictions for crimes of violence; a conviction of
11 February 6, 1990, in which he pled guilty to racketeering
12 conspiracy and operating an illegal gambling business --
13 sounds familiar, doesn't it? -- was sentenced to 78 months;
14 and the conviction of May 28, 1996, in which he pled guilty to
15 extortionate extensions of credit.

16 I'm well-satisfied that the defendant meets the
17 criteria for career offender status. And in this case, what
18 that means is that his criminal history category moves to a
19 Category VI.

20 What do you wish to take up next?

21 MR. BHACHU: Judge, with that determination, the
22 guideline range exceeds the statutory maximum for the
23 defendant.

24 We also had, for the record, a motion for an upward
25 departure relating to the ties of the defendant to organized

1 crime, and also for his prior recidivism as your Honor just
2 mentioned. In light of your Honor's ruling with respect to
3 the issues you've just set forth, I don't think it's necessary
4 for us to actually -- as an academic matter -- to reach the
5 organized crime motion for upward departure or for recidivism.
6 And we'd argue those as 3553(a) factors if we may.

7 THE COURT: There's a question of the defendant's
8 position of leadership. Does anybody wish to address that?

9 MR. BHACHU: Judge, I think -- I don't think it
10 actually changes the guideline range. I'm happy to argue it.

11 THE COURT: There are so many different possible
12 permutations of this guideline range that --

13 MR. BHACHU: That's correct, Judge.

14 THE COURT: -- I think under some possible
15 combination of determinations, it could.

16 MR. BHACHU: Right. I'm happy to argue it briefly.

17 I think the evidence definitely shows that Mr. Sarno
18 was a leader, for many of the reasons your Honor just
19 mentioned.

20 To the extent he was directing other people to commit
21 an arson, I think that implies a -- his leadership.

22 His leadership was even more strongly established
23 with respect to the illegal gambling activity, which I
24 discussed earlier. He was actually authorizing or sanctioning
25 where illegal gambling devices were being placed. And it was

1 clear that -- even from the accounts that Mr. Volpendesto
2 gave -- that Mr. Sarno was the one that was in charge of
3 illegal gambling activity in Cicero.

4 So for those reasons, we would ask you to find as
5 well that -- with respect to Count One -- that a four-level
6 enhancement was appropriate.

7 There was some suggestion that somehow his leadership
8 points should be apportioned across different type of
9 activity. United States v. Damico indicates the Court is not
10 to do that. The leadership enhancement is to be applied with
11 respect to the count of conviction as a whole. And if he, in
12 fact, is found to occupy a leadership position with respect to
13 a particular racketeering act, that enhancement applies across
14 the board under our understanding of Damico.

15 THE COURT: Defense.

16 MR. GILLESPIE: Well, Judge, I have never been strong
17 in academics, but maybe I -- I will address briefly the
18 organized crime.

19 THE COURT: Did you say I've never been strong in
20 academics?

21 MR. GILLESPIE: He said it was academic, the
22 organized crime points in this case. But academic or not, I
23 suspect your Honor will have to make a conclusion in that
24 regard, unless they're not asking for it anymore.

25 MR. BHACHU: Well, Judge, what I just addressed was

1 the leadership role. I can also address the organized crime
2 enhancement now so that counsel can respond.

3 MR. GILLESPIE: Well, if they don't want to ask for
4 it, then I don't have to respond. That would be all right
5 with me.

6 MR. BHACHU: For purposes of the record, Judge, it
7 wouldn't hurt if your Honor makes a ruling on both just so
8 that, you know, there's -- it would be, I think, frankly
9 easier with regards to issues that might arise on appeal.

10 If I might just briefly, with regards to the
11 organized crime issue. I think we set that forth in great
12 detail in our filings about a motion for upward departure. I
13 see your Honor nodding. I apologize for the length of some of
14 our filings. But I think it was important to lay out a
15 history with respect to Mr. Sarno so that your Honor could be
16 fully informed in making a determination about whether or not
17 these crimes were committed in -- through Mr. Sarno's
18 association with organized crime.

19 What we laid out in our papers in brief, Judge, is
20 that Mr. Sarno has previously pled guilty to being a part of
21 the Ferriola Street Crew. That was from 1975 to 1989. He
22 entered into a written plea agreement with the government in
23 that case. And in that case, he admitted, essentially, for
24 that 14-year period being involved in the affairs of an
25 enterprise through a pattern of racketeering activity that

1 included illegal gambling and multiple acts of extortion. He
2 was imprisoned on that case, the Infelise case, as well as the
3 Castaldo case, up until approximately, I think, 1999.

4 We set out in our filing that immediately thereafter,
5 after his release, there's informant information indicating
6 his continued involvement with organized crime, his continued
7 involvement with other organized crime figures such as Outfit
8 boss James Marcello. And then in addition to that informant
9 information, we supplied to the Court for your consideration
10 prior to today certain video recordings that further
11 corroborated the fact that Mr. Sarno remained involved in
12 organized crime activity. Those recordings were from 2003.

13 Your Honor may recall -- I believe the first
14 recording takes place in June of 2003. It's actually a news
15 story done by Chuck Goudie from ABC 7 channel news. At the
16 time he's got dark hair. It's now gray. But what it shows is
17 that Mr. Sarno is mentioned in a story relating to James
18 Marcello, James Marcello's efforts to actually get out of
19 jail, to get in a supervised release living situation.

20 Shortly after that recording, several days
21 thereafter, there's an interception at Milan prison between
22 James Marcello and Michael Marcello. And in that
23 interception, the two men discuss the news story that's
24 appeared, that Chuck Goudie has featured on his broadcast.
25 And one of the things they talk about is -- you know,

1 Mr. Marcello is telling him, well, who's in the news story.
2 And he mentions Mutt and Jeff. And then he holds up his
3 finger and says, The big guy only. And we know from other
4 testimony in this case that one of the monikers that Mr. Sarno
5 was addressed by was the big guy. In fact, Mr. Knight
6 testified that Sam Volpendesto referred to Mr. Sarno as the
7 big guy.

8 And thereafter we have another recording -- I think
9 it's several months thereafter -- between Mr. Marcello and --
10 sorry -- James Marcello and Michael Marcello, again at Milan
11 prison. And this time they're talking about illegal gambling
12 activity. And the reason we know they're talking about
13 illegal gambling activity is because they mention the ins and
14 the outs and whether or not they can try to switch over to
15 some sort of lease arrangement in effect -- in a means of
16 trying to shield themselves from being culpable for the
17 illegal gambling activity that's taking place at various
18 locations.

19 And in relation to that conversation, they again
20 ask -- or Mr. Marcello, James Marcello, asks how are Mutt and
21 Jeff doing. And Michael Marcello discusses how much profit
22 they're making from their operations.

23 These facts demonstrate, Judge, that Mr. Sarno did
24 not end his Outfit activities in 1989 when he was convicted,
25 when he was arrested for his participation in the Ferriola

1 Street Crew. It continued onward after he was released from
2 custody in 1999 and continued onward into the time period
3 that's covered by this racketeering conspiracy.

4 The notion that somehow Mr. Sarno wasn't involved in
5 illegal gambling activity in the Cicero area and that his
6 front business, if you will, Amusements Inc., took over
7 territory, when he is specifically referenced in recordings
8 between the Marcello brothers, when he has ties that are
9 confirmed through informants and his own prior convictions to
10 the Chicago Outfit is incredible.

11 One of the other things that's notable about James
12 Wagner's testimony from the Family Secrets case is that you
13 take an oath and you take an oath for life when you become a
14 made member of the Chicago Outfit. This is consistent
15 behavior with the fact that Mr. Sarno was associated with
16 organized crime and was able to try to dictate what was going
17 on in territory that was under his control in Cicero. That
18 also explains why Mr. Sarno had the notion in his head that it
19 was okay for him to visit Vince Dublino and tell him what he
20 was and what he was not going to do.

21 All of these factors, Judge, demonstrate that the
22 illegal gambling activity that forms both part of Count Two
23 and Count One was done through the defendant's associations
24 with organized crime.

25 And the fact that Mr. Polchan also provided street

1 tax, in our estimation of the evidence, to Mr. Sarno is also
2 demonstrated by the fact that Mr. Sarno was involved in
3 organized crime because that's the modus operandi of organized
4 crime. You take a cut of illegal activity from your
5 subordinates.

6 So for those reasons, Judge, we would ask that you
7 both find that he occupied a leadership role with respect to
8 the conspiracy charged in Count One and also that both the
9 activities in Count One and Count Two were committed through
10 the defendant's associations with organized crime.

11 MR. GILLESPIE: I'm sorry I brought it up.

12 THE COURT: Yes, well, there you go.

13 MR. GILLESPIE: Your Honor, there's no question
14 that -- and your Honor has the previous pleas of Michael. And
15 there's also -- you have the submissions of the government and
16 these tapes and Mr. Wagner's opinion and Mutt and Jeff.
17 You've also seen in there footnotes that Mutt and Jeff
18 apparently can refer to different people.

19 But here's the point, maybe -- and I don't think it's
20 just academic. I think that this is the point regarding that
21 upward departure: This case was not an Outfit case. In this
22 case the enterprise was not the Outfit. The cases cited by
23 the government were. The two cases where the upward departure
24 was given, organized crime or the Outfit was the driving force
25 of those cases. It's clear from the facts. There's

1 stipulations through the plea. That's not the case here.
2 Your Honor did not let Outfit or mob or that type of stuff --
3 or tried very carefully to preclude anything like that from
4 coming into this case.

5 THE COURT: Only because you asked me to.

6 MR. GILLESPIE: I did. Well, the jury did --
7 apparently it didn't need it to come to its conclusion. I
8 think the proof of the pudding is in the eating here. This is
9 not an Outfit case. It wasn't presented to the jury.

10 THE COURT: So we did good?

11 MR. GILLESPIE: Pardon me, sir?

12 THE COURT: So we did good?

13 MR. GILLESPIE: You did good?

14 THE COURT: You and I, in keeping that out?

15 MR. GILLESPIE: Well, your Honor does good in almost
16 everything.

17 (Laughter.)

18 MR. GILLESPIE: Well, reserved until after the
19 sentencing.

20 But at any rate, my point is that this was not an
21 Outfit case. The jury didn't consider it an Outfit case.
22 Your Honor didn't allow it to be considered an Outfit case.
23 And an upward departure in that area is not warranted by the
24 cases they cite that I see.

25 MR. BHACHU: The only thing I would add on that

1 score, Judge, with regards to the Hanhardt case, that was not
2 an Outfit case, if you will, in the sense that the Outfit was
3 not mentioned in the indictment in that case at all. That was
4 obviously a jewelry theft and robbery ring as well. There was
5 some connection to organized crime in that case that aided in
6 the commission of the crimes, but it certainly wasn't charged
7 as an Outfit street crew case by any means.

8 MR. GILLESPIE: Your Honor, I believe -- I'm sorry --
9 but I believe there were stipulations in that case and in the
10 plea that Outfit crews were involved in this case, and indeed
11 it was an important part of the case. Counsel for
12 Mr. Hanhardt is in court. He can address that clearly. But
13 it's my understanding that the plea and the sentencing clearly
14 indicated that that case was driven by Outfit.

15 THE COURT: Okay. First, as to the position of
16 leadership, I think the comments I previously made with
17 respect to the inferences I've drawn regarding the arson
18 bombing and the robbery aspects of the enterprise indicate my
19 reasoning for believing that the government has met its burden
20 in establishing that the defendant had a leadership role in
21 the organization. I think that's even more strongly borne out
22 with respect to -- or by the evidence with respect to the
23 gambling activities where the defendant was clearly a leader.

24 In addition to the things that have been mentioned, I
25 recall, I think fairly accurately, the conversation between

1 this defendant and Mr. Polchan when they were discussing
2 rolling out the new machines in the Outlaw clubhouses all over
3 the -- in different parts of the state and Mr. Sarno voicing
4 words of approval, such as "that's what we like to hear" when
5 Mr. Polchan described his plan for doing so, clearly
6 indicating a supervisory position over what was taking place.

7 Along with everything else, I find that the evidence
8 does establish that the defendant held a position of
9 leadership in the organization.

10 With respect to the upward departure for utilizing
11 connections within organized crime, I have a bigger problem
12 with that request by the government. I think it's -- you
13 know, you can get carried away making determinations in these
14 cases unless you stick to the basic rules that we're supposed
15 to follow, which, once again, is that whatever inferences we
16 draw have to be reasonable inferences and they have to be
17 based on the facts before us. And that's where I have a
18 problem.

19 I have no problem drawing inferences from the facts
20 in this case. I heard the facts. I'm intimately familiar
21 with those facts. I was able to see the witnesses, judge
22 them, judge their credibility, as the jurors did, and I've had
23 the benefit of those observations.

24 The inferences necessary to come to a determination
25 that the defendant was utilizing connections within organized

1 crime, although tempting, are based on so many different
2 sources of information -- bits of transcripts of
3 conversations, newspaper and television reports of
4 conversations referencing those reports -- I don't feel
5 comfortable making inferences to a preponderance of the
6 evidence standard from those sources. Inferences have so much
7 to do, as I indicated before in my prior analysis, with the
8 context of things, the full context, the full background, all
9 that was being said and considered. And although the
10 government has done, I think, an absolutely splendid job of
11 laying its view of what those background facts are and all of
12 the context surrounding the conversations, I don't, frankly,
13 feel comfortable coming to those conclusions from sources that
14 I don't have the full background on.

15 So the Court makes no finding with respect to an
16 upward departure for utilizing connections with organized
17 crime.

18 MR. GILLESPIE: Thank you, sir.

19 MR. BHACHU: Just for purposes of completeness,
20 Judge, we also had made a motion for upward departure relating
21 to -- I guess what we sometimes call for being a hard learner;
22 that is to say, for recidivism with regards to the fact that
23 this is defendant Sarno's second conviction for both
24 racketeering conspiracy and his second conviction for illegal
25 gambling. We, again, can address that in the context of the

1 3553(a) factors.

2 THE COURT: I think that probably comes in best under
3 the context of the 3553 factors.

4 MR. BHACHU: Very good, Judge.

5 THE COURT: I think that then addresses all of the --

6 MR. BHACHU: Judge, and I --

7 THE COURT: -- all of the basic actual calculation
8 issues, right?

9 MR. BHACHU: I believe so, Judge. I think, based on
10 your Honor's rulings, that the guidelines calculation is a
11 level 42, Criminal History Category VI, which yields a range
12 of 360 to life.

13 THE COURT: Took the words right out of my mouth.

14 MR. STEINBACK: I have to consult with counsel for a
15 moment, please.

16 THE COURT: Sure.

17 (Brief pause.)

18 MR. BHACHU: Judge, could we have one moment?

19 THE COURT: Yes.

20 (Brief pause.)

21 MR. STEINBACK: Your Honor, I understand how the
22 government and the Court have come to their decisions. The
23 position papers of the parties have already been presented and
24 the Court has studied them.

25 There is some question legally with respect to how to

1 calculate leadership enhancements with respect to each of the
2 predicate acts and then compiling them in such a way that they
3 result in what's -- something that would be greater than each
4 of the individual parts.

5 And, essentially, the government at one point had
6 said he is, according to Damico, a leader of the overarching
7 conspiracy, therefore he gets a four-level increase for it;
8 and now jumps to the conclusion that he is therefore the
9 leader of each and every robbery that occurred, when, in fact,
10 some of those robberies happened without his knowledge --
11 according to the government's own confession here -- without
12 his participation and he's only accountable after the fact and
13 therefore cannot be a leader in connection with those. So
14 where we jump from a 35 to a 42 is problematic to me.

15 I understand the Court's consideration. It is my
16 belief that the guideline range, based on your Honor's
17 rulings, legally is 35, criminal history level VI; not 42,
18 criminal history level VI. And that it would be inappropriate
19 under the facts and the law to effectively increase by seven
20 levels that which is already accounted for.

21 So that's the reason for the disagreement between the
22 parties.

23 MR. BHACHU: Judge, if I might just respond quickly.

24 The level 35, Criminal History Category VI that
25 counsel is referring to is if the defendant was held solely

1 responsible for the LD Jewelers robbery. Because he's
2 accountable for all the robberies, the four-level increase
3 would take effect -- or, sorry -- the upward -- or sorry --
4 the total calculation with regards to Count One would include
5 a responsibility for the Marry Me Jewelers robbery, which has
6 an offense level of 38. And then there are additional units
7 assigned to the other robberies.

8 THE COURT: The Marry Me Jewelers robbery was the
9 robbery in which the victim, the jewelry salesman, was shot --

10 MR. BHACHU: Correct, Judge.

11 THE COURT: -- in the chest, correct?

12 MR. BHACHU: Which has a higher guideline calculation
13 than the LD Jewelers robbery does.

14 THE COURT: It's a 38.

15 MR. BHACHU: And so other robberies are assigned
16 either a unit or a half unit correspondingly. I would refer
17 counsel to page 31 of our government's version of the offense
18 which sets out the calculations as we calculated them.

19 And to the extent counsel lodges an objection to the
20 application of the leadership enhancement, as we noted in our
21 papers, we specifically discussed in detail the application of
22 United States v. Damico and the fact that that four-level
23 increase occurs with regards to all underlying acts.

24 THE COURT: I'm aware of the defendant's position in
25 that regard. I reviewed the submissions of the parties. I,

1 like Mr. Gillespie claimed not to be an academic at all, I --
2 however, having been forced to look at these issues, I
3 conclude that I agree with the government's position. I think
4 it is correct. I think they properly applied the leadership
5 enhancement. And, of course, the government's guideline
6 calculation is 44. Mine is 42 because I do not add the
7 two-level increase for organized crime association, as to
8 which I've made no finding.

9 The Court then concurs with Mr. Bhachu's
10 pronouncement, that is, the combined total adjusted offense
11 level is 42. The defendant's criminal history category, I
12 find, to be VI. The resulting guideline range, if calculated
13 in the normal manner, is 360 months to life in prison. The
14 statutory maximum penalty for Counts One and Two, however, is
15 a total combined 300 months and thus the default guideline
16 range, I think, becomes 300 months.

17 3553 factors. Government first.

18 MR. BHACHU: Judge, we'd ask that you impose the
19 sentence called for by the guidelines, a sentence of 300
20 months. We'd also ask, in light of all the conversation that
21 we've had for the last, I guess, hour and a half, that you
22 also expressly state that you would impose that sentence even
23 if the guidelines were calculated in some different
24 permutation than they were. There are many reasons why a
25 300-month sentence is appropriate in this case, Judge.

1 I've obviously been present when your Honor sentenced
2 some of the co-defendants in this case, and your Honor is
3 thoroughly familiar with the facts of this case and the
4 reasons why such a sentence is -- the one we're asking for is
5 appropriate.

6 When we look at the nature of this offense and also
7 the history of this defendant, a 300-month sentence calls out
8 for imposition. This man has been a member of organized crime
9 for a long period of time, and I respect your Honor's decision
10 with regards to that as we just discussed.

11 But in terms of his history, he has been a member of
12 the Ferriola Street Crew for 14 years, has engaged in multiple
13 acts of extortion, attempted extortion, bookmaking, illegal
14 gambling. Judge Williams when she was a district court judge
15 found him to have extorted individuals in that prior case as
16 well; notably, one of those extortions in which he was
17 accompanied by his co-defendant in this case, Mark Polchan.
18 So he bears a dubious distinction that some of his other
19 co-defendants don't have, which is to say that he has a prior
20 conviction which is based upon 14 years of criminal activity.

21 We had Sam Volpendesto who has -- had no notable
22 prior convictions; similarly, Mr. Polchan; two subordinates
23 that this man directed in the bombing of C & S Coin Operated
24 Amusements who received sentences that far exceed the
25 guidelines sentence that we're asking for with respect to this

1 defendant.

2 Not only did he have 14 years, Judge, of criminal
3 activity, he was previously described by an AUSA, Mitch Mars,
4 in that prior case as being a professional criminal back then.
5 He has another eight years on top of it after he gets out of
6 prison here, again, directing the commission of violent
7 crimes, asserting his ability to dictate how other people
8 conduct their business. And he's doing this while he's
9 actually on supervised release from another case.

10 Clearly this man is incorrigible. He does not care
11 about the law. He has gotten up before a judge before and --
12 you know, got up before Judge Andersen and talked to Judge
13 Andersen about how he was going to turn over a new leaf. That
14 obviously was not true. And he's prepared to dedicate the
15 rest of his life to criminal activity because that is the only
16 thing he knows.

17 His prior convictions for the exact same crimes which
18 I discussed moments ago also dictates that he gets a sentence
19 of 300 months. He's previously been convicted of racketeering
20 conspiracy. And yet here we are back again once more,
21 Mr. Sarno not only convicted of both racketeering conspiracy
22 with violent elements to it, but also again illegal gambling
23 activity. It just seems as if Mr. Sarno doesn't learn. And
24 because he doesn't learn, we need a sentence of 300 months to
25 both incapacitate him, to protect the public and also to

1 discourage him from continuing this type of activity in the
2 future.

3 And I do think a stiff sentence like this, Judge,
4 will also deter others out there that are involved in criminal
5 activity that is of an organized nature. There are going to
6 be other people -- again, I respect your Honor's decision not
7 to impose the organized crime enhancement, but I can guarantee
8 you that there are many individuals out there who understand
9 who Mr. Sarno is and what his position is in the Chicago
10 Outfit. And those people will be dissuaded by a strong and
11 stiff sentence that is meted out against Mr. Sarno. And it's
12 something that I think your Honor should bear in mind in
13 regards to how he is sentenced here today.

14 Finally, I'd like to touch on some of the mitigation
15 evidence, Judge, that has been brought before you. And it was
16 rather -- I think it was kind of focused on his family
17 activities and his relationship with his friends.

18 As I noted in our filings, that's the same strategy
19 Mr. Sarno used when he was sentenced before Judge Andersen.
20 There was this boast about, well, I've gotten a hundred
21 people -- X number of people to write letters for me. It
22 doesn't matter. In fact, this type of evidence, in my mind,
23 is actually aggravating. And I say that because what we have
24 is a man who has done this before. He knows the consequences
25 of being involved in criminal activity of this nature. He

1 knows what type of costs his family actually will bear if he's
2 captured or if he's caught. He understood that, at least in
3 part, by the levels of precautions he took to avoid his
4 activities coming under surveillance.

5 He is prepared to threaten people. He's prepared to
6 order a bombing. He's prepared to orchestrate illegal
7 gambling activity. He's prepared not to file tax returns to
8 hide his illegal income. And when he's committing these
9 crimes, he doesn't care obviously what cost it's going to have
10 on his family.

11 And then after he's done bullying people, after he's
12 done terrorizing people in the community, then what does he
13 do? Well, that's when he sends us letters from his family
14 members. I think that tells you a little bit about the
15 character of Mr. Sarno and what he's about. He's going to put
16 his own family's happiness on the line when he's committing
17 these crimes for the Outfit, but then thinks that when it's
18 time to pay the price, he's shameless enough to have them
19 submit letters on his behalf. It shows a lack of character in
20 my mind. And it certainly is not something that deserves any
21 mitigating consideration by the Court.

22 So for those reasons, Judge, we would ask that a
23 guideline sentence of 300 months be imposed upon the
24 defendant.

25 THE COURT: Defense.

1 MR. STEINBACK: Well, there's some things to say,
2 your Honor.

3 I understand that the Court has sentenced other
4 individuals in this case. I understand the guideline range
5 established. I would be foolish to blink my eyes that the
6 sentence imposed on Polchan, the sentence imposed on
7 Volpendesto and think that I can walk into this courtroom and
8 ask your Honor for something less than the top of the
9 guideline range or, in this case, the statutory maximum.

10 And if I were to take the government's
11 characterizations at face value -- and I don't, as much as I
12 respect them -- then I wouldn't have much to say and we'd
13 pretty much be through. But there are some things to be said,
14 and there are some things that perhaps would cause your Honor
15 to view things in a different light. And I believe your Honor
16 can bear up under the heavy mantle of differing views and sort
17 out the characterizations from reality and perhaps look at
18 this individual in a light other than the one that has been
19 partially portrayed by the picture drawn by the prosecution in
20 this case.

21 Now, I want to talk a bit for the sake of clarity and
22 hopefully -- because I think that I'm right about this -- your
23 Honor might agree, that simply because the guidelines as they
24 exist today require a Criminal History Category VI, that
25 therefore that is the proper criminal history category. It's

1 never really been articulated thus far in this hearing what
2 exactly the contrast is. And I'd like to make that clear.

3 The contrast is relatively simple to state. Once,
4 under the guidelines -- for a long time as a matter of fact,
5 years -- there was the concept of related cases. Then in
6 November of 2007, the guideline commission, as it has been my
7 experience it frequently does, changed its policy, gave
8 different advice about how to treat related cases. They
9 decided for the time to eliminate the notion of relatedness
10 and instead replace it with single or separate.

11 But that doesn't change the fundamental underlying
12 nature of what those cases are and whether they're related.
13 Because the danger is this -- and it was why there was the
14 concept of relation and it hasn't changed -- the prosecution
15 can -- I'm not saying it would -- but it could take a gambling
16 conspiracy, cut it up into three or four pieces and wind up
17 jacking a defendant's guideline range into category VI any
18 time it wants under the present formulation of the guidelines.
19 Taking this advice allows that to happen. And that's what the
20 doctrine of relatedness was ultimately conceptualized for, to
21 avoid that. And some of what the government has said here, in
22 fact, plays into that, doesn't run counter to it.

23 It is striking when one reads the presentence report
24 that was prepared on July 22nd, 2011, in this case because the
25 description provided there is very telling. Page 16 of that

1 report, the petition -- the probation department identified
2 what the prosecution has called the Infelise case, which was
3 before Judge Williams, which charged racketeering, the
4 operation of an illegal gambling business and related
5 offenses. And on lines 348 to 352, the probation officer,
6 relying on everything that the -- it received from the
7 government and all the records it could obtain independently,
8 said that the defendant participated in racketeering activity
9 which included the operation of an illegal parlay card
10 bookmaking operation. The racketeering activity included the
11 extortion of Mr. Tzivas. The defendant communicated a threat
12 to inflict physical harm to Mr. Tzivas. The defendant
13 demanded Mr. Tzivas pay a periodic street tax on the card
14 games he hosted at his club.

15 Now, in that plea agreement, which I was able to
16 obtain, and in the findings that Judge Williams made, it was
17 clear from the evidence that although that threat was made,
18 not only didn't anything ever happen, but Mr. Sarno never even
19 came back to Mr. Tzivas. He saw him once. No street tax was
20 ever actually collected.

21 The second offense, the so-called Castaldo case
22 before Judge Andersen, alleges essentially the same kinds of
23 things. The probation office describes the Castaldo case in
24 the same way. The defendant was a member of the Ferriola
25 Street Crew. The defendant was involved in an illegal

1 gambling business which operated a parlay card bookmaking
2 business. The defendant was involved in the collection of
3 juice loans and street tax and managing the printing of the
4 parlay cards for the crew.

5 Mr. Sarno pled guilty to both of those cases. The
6 plea agreement and the government version in the Infelise case
7 makes it very clear that the dealings, short as they were,
8 with Mr. Tzivas happened in the fall of 1988.

9 Now, from the same dealings, there was another
10 individual referred to in the presentence report by the name
11 of Rios, where Rios apparently fell behind in some gambling
12 debts. Rios took some juice loan; it's not clear to me from
13 all that I've read exactly from whom.

14 THE COURT: Several sources apparently.

15 MR. STEINBACK: Apparently.

16 THE COURT: All at the same time. Not wise.

17 MR. STEINBACK: No. And that happened sometime in
18 the fall of '87 into the fall of 1988. So both offenses
19 involved an illegal parlay card bookmaking business. Both
20 occurred during overlapping time. Both involved efforts of
21 the collection of juice loans and street tax. And while the
22 participations in one gambling event were -- participants were
23 different, the nature of the crime was the same. The time
24 frame was the same. The related offenses were near identical,
25 so much so that District Judge -- then-sitting District Judge

1 Andersen, using the applicable guidelines at the time of that
2 offense, those from 1995, found the 1990 and the 1993 cases
3 related and, thereby, did not add any points for the Infelise
4 conviction.

5 And as far as I can determine, the government didn't
6 appeal from that because, in fact, that was a proper
7 application of the guidelines. That was the law of the case
8 with respect to Mr. Sarno in 1996, all the way up to November
9 of 2007. A sentencing judge in this district appropriately
10 applied the then-guideline manual, established a proper
11 criminal history and imposed a reasonable sentence thereafter.

12 And it's, therefore, understandable that in the
13 initial presentence report of July 11th, the presentence
14 report said, Based on the judgment and commitment order issued
15 by Judge Andersen and the dockets that the United States
16 Probation Office looked at, the Infelise and Castaldo cases
17 are related and no points are added.

18 Now, I am not suggesting for one moment that the
19 Chapter 4 provisions under (a) (2) did not change in November
20 of 2007. But it is disingenuous to think with a sentencing
21 commission -- to which I was for two years on the
22 practitioners' advisory board and involved myself with three
23 different guidelines -- it is disingenuous to think that that
24 will be the law two or three years from now. Nobody knows.
25 This concept of relatedness is going to come back to haunt the

1 criminal justice system because some prosecutor is going to
2 break up a conspiracy into little itty-bitty parts and wind up
3 getting someone from a criminal history of I to a VI without
4 much effort.

5 Advice from the guidelines are going to change.
6 Policies are going to change. The Demaree ruling, which is
7 unique to this circuit and has been criticized by virtually
8 every other circuit, is likely one day to change. And no one
9 can sit here today and say that the guidelines advice provided
10 in Chapter 4 in 1996 will not once again, two or three years
11 from now, be the rule of the case.

12 The government says to your Honor, no, it's a
13 different case; it used outmoded guidelines, and it's accorded
14 to no deference. But I wonder if the shoe was on the other
15 foot what the government would have said, your Honor. What if
16 the guidelines had been in 1996 what they are now and what if
17 the guidelines are now what they were in 1996? I wonder if
18 they would have said so quickly this is really a different
19 case and that a district judge's proper determination of the
20 guidelines is entitled to no effect whatsoever, no weight.

21 I understand what 4A1.2(a)(2) advises today, but it
22 doesn't mandate it. And before November of 2007, it didn't
23 even advise it. Now, it is an impact which cannot be
24 overstated because the criminal histories from a III to a VI
25 so dramatically change the view of this individual and these

1 guidelines that great care should be taken in so quickly
2 eschewing the determination of a district judge that was
3 appropriate at the time, the rejection of which could very
4 well create an ex post facto law in this instance.

5 Your Honor, it would be different if Mr. Sarno's
6 conduct in this case effectively substantively went in -- into
7 the time frame of November of 2007. But what we have here is
8 a conspiracy from 2001 to 2006, with essentially -- although
9 the government talks about things happening in 2008 -- the
10 last substantive conduct relating to Mr. Sarno and his
11 personal involvement was in the summer of 2007, before that
12 guideline was enacted, in which video machines were put into
13 the two motorcycle clubs and that was in Kankakee.

14 THE COURT: The Outlaws.

15 MR. STEINBACK: The Outlaw Motorcycle -- Outlaw Club
16 clubhouse.

17 So we've objected to the adverse -- we think that the
18 advice from the current guideline manual is -- is to be, in
19 this instance, disregarded because its application effectively
20 countmands a written order by a judge in this district
21 consolidating those matters as related.

22 We also believe it creates, as I said, an ex post
23 facto law because it clearly places Mr. Sarno at a substantial
24 disadvantage as compared to the law as it stood when he
25 committed the crimes of which he has been convicted.

1 But beyond acting as a possible de facto law, beyond
2 the invalidation of a proper district court ruling, and other
3 technical considerations aside, there is the notion of being
4 fundamentally consistent, fundamentally fair.

5 The government talked so much about Mr. Sarno's
6 involvement in these different crimes. He certainly
7 understood the impact and meaning of Judge Andersen's ruling.
8 It isn't like in Demaree where the court said what defendant
9 is going to understand what his guidelines were or how they're
10 going to be treated in any way. Well, this defendant did
11 understand exactly how they were treated. They were treated
12 by a valid order and suddenly, through no actions relating to
13 those two prior cases, they become career offender status
14 rather than related.

15 But that is just advice. It is not mandate. It is
16 not something your Honor must follow.

17 The government says that by us asking for your Honor
18 to consider a different guideline calculation with regard to
19 criminal history that we are asking your Honor to ignore the
20 statute, 3553(a) itself; we're asking your Honor to ignore the
21 guidelines themselves. And I want to point out that the
22 guidelines themselves, 1B1.11(c) -- that's the current
23 guideline manual -- mandates that a court shall consider all
24 the 3553(a) factors taken as a whole. And the background
25 commentary to that provision says, in effect, the last thing

1 the court must do is consider the prospect of variance.

2 So by asking the Court to do this, I am asking
3 precisely to follow what the current guidelines advise; in
4 fact, mandate.

5 It doesn't say anywhere in those guidelines that your
6 Honor is handcuffed to the Criminal History Category VI. In
7 fact, the Supreme Court has repeatedly said just the opposite.
8 It expressly permits district judges to grant variances from
9 the guidelines, including from criminal history category, in
10 order to -- and even circumvent the stiff constraints that
11 departures once had, the confining nature that they had on
12 judges.

13 And in that connection, this circuit, as well as
14 every other circuit, has a case -- Simmons in this circuit,
15 others -- where a downward variance has been approved. The
16 only difference in this circuit is, at least under some of the
17 cases, that departure is no longer a nomenclature that's
18 recognized. They're all variances. But variance, departure,
19 however, your Honor has the ability notwithstanding the change
20 in November 7 -- of November 2007 to remain consistent and
21 honor a prior ruling that was appropriate at the time and
22 certainly should be followed in connection with the current
23 circumstances.

24 The government goes on to say something else. It
25 says that they are troubled, in a footnote. They find the

1 probation officer's reference to the prospect of a downward
2 variance or departure troublesome. That's what they say in
3 their response, page 4, from February 1st of this year. They
4 say that effectively it's not the practice of the probation
5 office to make such a recommendation that a defendant may
6 warrant an upward departure so, therefore, the probation
7 office should not make recommendations that benefit the
8 defendant. I don't know where that comes from because the
9 presentence reports I read go both ways.

10 And I can tell this Court, although it isn't the
11 case, that if for argument's sake it was -- let's assume that
12 the guidelines somehow, based on changes, left Mr. Sarno in a
13 Criminal History Category II. We would not have to wager much
14 to come to the conclusion that the probation department would
15 say that a Criminal History Category II substantially
16 understates Mr. Sarno's criminal history and would recommend
17 an upward departure. There is no doubt about that. I've seen
18 it in other cases. And I doubt very much that the government
19 would be troubled or find troublesome a recommendation such as
20 that. But in this case, what's happened is it's troublesome
21 because here these factors tend to tilt the scale downward,
22 not upward.

23 Everybody is quoting from somebody. And my quote is,
24 what's sauce for the goose is sauce for the gander.

25 Now, the last thing the government does in connection

1 with our position here is say that by doing so, we are
2 effectively asking your Honor to overrule Demaree because
3 Demaree resolved the issue of ex post facto, however much it's
4 been criticized and however unique that is. But we have to
5 live with that in this circuit. But that doesn't end the
6 inquiry because there's a flip side of Demaree not discussed
7 but just as equally compelling.

8 Judge Posner expressly stated in the last two pages
9 of that decision, The sentencing judge is not required or,
10 indeed, even permitted to presume that a sentence within the
11 guideline range is the correct sentence. The sentencing's
12 court -- the sentencing court's choice of sentence, whether
13 inside or outside the range, is discretionary.

14 And, finally, in connection with that, The freedom to
15 impose a reasonable sentence outside the range is unfettered.

16 So while the ex post facto argument in terms of
17 trying to start with a different book is foreclosed, after
18 that, it is not. And there's nothing about our argument which
19 in any way seeks to overrule Demaree. In fact, it is very
20 much consistent with the precise express language that Demaree
21 provides. 3553(a) allows your Honor to consider those factors
22 taken as a whole. 1B1.1(c) directs your Honor to review and
23 examine the prospect of variance, and Demaree itself expressly
24 invests in the Court the discretion to do so.

25 Now, what is going to make this Court -- however

1 inclined, even if your Honor determines that I'm right about
2 the law -- what is it that would prompt your Honor to say
3 about this individual, given the government's portrayal, that
4 any kind of leniency ought to be expended on Mr. Sarno?

5 I hear these comparisons. They're written and cited
6 in the government's papers and in our papers to the Damico
7 case and to the Hanhardt case, where I am very familiar. I
8 can tell this Court, Damico admitted that he was the leader of
9 a criminal organization involving the Chicago Outfit; and that
10 in connection with that, for 15 years, he oversaw a whole
11 panoply of crimes, including a gun crime to which he pled
12 guilty in connection with a planned robbery.

13 And although in that case Damico pled guilty, he
14 fought the government hammer and tong, very much minimizing
15 what it was he said. And ultimately his sentence was 87
16 months for his role as a leader of the criminal enterprise and
17 60 months consecutive for the gun, for a total of 147 months.

18 I talk about the Hanhardt case in here. That was a
19 plea, but Mr. Hanhardt did not receive acceptance of
20 responsibility until the matter was reversed and remanded by
21 the appellate court because, there, the fight was hammer and
22 tong as well. And in connection with that, there was a
23 stipulation that organized crime ties were involved -- a
24 stipulation -- and an allegation that Mr. Hanhardt had engaged
25 in misconduct from the very end of his position as deputy

1 commissioner of the Chicago Police Department, for a period of
2 years far longer than those set out in this indictment, and
3 that he led a burglary crew that also involved -- although it
4 was disputed -- but found by the court involved an armed
5 robbery in which people were beaten. His initial sentence was
6 188 months, subsequently reduced to 141 months.

7 With respect to what is meant by unwarranted
8 disparity, an individual needs to be compared to those not
9 within his case but, the Seventh Circuit makes clear, across
10 the spectrum of cases in this district and out. And Damico
11 and Hanhardt, since they were discussed in our position
12 papers, come to mind as striking examples of people similarly
13 situated.

14 The government, as Mr. Gillespie has pointed out, has
15 left no stone unturned; has employed the good offices of some
16 of the finest investigators and joint cooperation between
17 agencies that one could imagine.

18 And when you look at what it is that the person did,
19 it is interesting and significant. Even if on a legal
20 accountability theory, a person is held under these broad
21 sweeps to be responsible for a crime, looking at the nature
22 and circumstances of the offense, I take in this instance
23 Mr. Bhachu's acknowledgments at face value. He didn't even
24 know much less personally participate in some of those
25 offenses. That much is clear. It would be a different thing,

1 would it not, your Honor, if he went in and shot the person,
2 stabbed the person?

3 But from what I can tell, with all this investigative
4 artillery at their disposal, he never shot anybody. He never
5 used a gun in connection with any crime. In fact, as I
6 understand it, he never even possessed a gun. Those things
7 matter. You can't just ball them all up and just say because
8 he's associated with these people who do these things, he did
9 those things. Okay. I accept your Honor's ruling. I respect
10 it. He's responsible for them, going all the way back to
11 Pinkerton and the wide sweep that conspiracies have in being
12 able to hold people accountable. But it is a far different
13 thing when we get down to what is the proper sentence and what
14 are the nature and circumstances of the offense as to exactly
15 what they did in connection with those things.

16 The government says he wasn't a personal participant.
17 And the government says he didn't even know about some of
18 those things. So while he may have had some control over
19 things -- and that one piece of evidence that sticks out is
20 when he tells somebody not to rob someone. And perhaps that
21 does show control. But it also shows that he is not
22 willy-nilly going around agreeing to rob or authorizing to rob
23 or just going ahead and letting anybody rob anybody because he
24 is ruthless and has no stops. Because he did stop those
25 things. And it thrusts both ways.

1 When we get down to the traditions that attach to
2 sentencing, policies of lenity and parsimony always have said,
3 if there is any doubt, even a small one, err in favor of the
4 defendant.

5 The government has said in its papers, although they
6 don't reiterate it here, that part of this conspiracy involved
7 the corruption of police officers; and they put that in
8 connection with Mr. Sarno's involvement. But I have read
9 thousands of pages of papers. I have read everything the
10 government has written, and I'm not saying that the use of
11 corrupt officers who illegally convey information is a good
12 thing. But the question is not whether that happened, but
13 whether Sarno had anything to do with that. Did he corrupt
14 these individuals? Are we to believe that these are young
15 innocents that naively fell under his spell and then suddenly
16 decided to forgo their oath? Because there's not a shred of
17 evidence that he corrupted any of them. When they decided on
18 their own to cross that bright line from adhering to their
19 oath and forgoing it, I don't know. But I know this: There's
20 no evidence that suggests that Mike Sarno had anything to do
21 with that.

22 Every time I have ever represented a police officer,
23 the principal argument in aggravation is that officers are
24 held to a higher standard because they've taken an oath to
25 enforce the law and then, beyond their public citizenship,

1 they've violated that oath. And here it is used as an
2 argument, strained I suggest, against Michael Sarno. But
3 there are no facts to support it, and it should not be
4 considered in aggravation despite the fact that it's in the
5 papers that the government has submitted.

6 Your Honor has read the character letters that have
7 been submitted. And I have listened, somewhat painfully, to
8 the characterizations that the government has chosen to affix
9 to the character letters submitted.

10 I know that Gabrielle had a lot to do with talking to
11 friends and neighbors and family. There isn't a person that
12 Michael Sarno went to and said, Write me a letter. That's
13 conjecture, and it's not fact. He didn't go to the people
14 sitting over here and ask for that. Just the opposite. We
15 did. And the reason that we did it is because there is a
16 disconnect between the public persona as portrayed by the
17 government and to a certain degree brought on Michael by
18 himself and that person portrayed in these hundreds of letters
19 voluntarily written by people from all walks of his life, not
20 just family, not just friends, but people in the community,
21 people from the neighborhood. And they don't just say he's a
22 pretty good guy, your Honor, give him a little bit of a break
23 if you could.

24 And there is so much content in those letters, it is
25 difficult to imagine that this individual is solely committed

1 to the commission of criminal offenses and nothing else. The
2 government wants it to be an all or nothing, but it isn't.
3 Not in this case. That would not be fair. That would trump
4 the nature and circumstances of the offense over the history
5 and characteristics of the offender, which is in violation of
6 the mandate of the very statute that they say we have ignored
7 because they are considered equally and together in that
8 statute.

9 And if he has devoted his life to the Chicago
10 Outfit -- where the government didn't even charge the Outfit
11 as the enterprise here or any of the other people as being
12 that -- how is it that these hundreds of instances occurred
13 over the years he's been out? What was he doing then? He
14 certainly wasn't committing crimes.

15 You have the spectrum from children who are good kids
16 that didn't get that way by accident. And everyone in the
17 family says they are the by-product of the guidance and
18 influences of Mike Sarno, their father. He didn't go to
19 school beyond the tenth grade because unfortunately the
20 circumstances of his childhood didn't promote such things.
21 Didn't allow for them. Didn't have a father who gave a damn.
22 In fact, just the opposite. Beat him any time he could.

23 But Michael broke that cycle of familial abuse; and
24 instead of being an abuser, as so many people do, what he did
25 was he said, Not my children. And it wasn't just the children

1 that he and his wife bore by blood. But the letters that are
2 written to your Honor, the outpouring of emotion from those
3 letters; from his sister when she had nowhere to go and three
4 little babies. Does someone who is ruthless baby-sit three
5 little babies all day long? Does he drive them to school?
6 Does he take them to all their doctors' appointments? Does he
7 go to their school field trips? Is he the person they say he
8 is? Or is he the person that the family knows him to be that
9 made sure that there was a roof over their head, that there
10 was a father figure in their life and that they were given
11 opportunities he never had? And he protected them and he
12 nurtured them and he loved them as if his own, and that's what
13 they wrote.

14 And the government says, that's not positively
15 reflective of his character. They say we've gone to that well
16 too often and it's dried up. Well, what does that mean? Did
17 he stop loving his children? Did he stop giving to his nieces
18 and nephews and the others not related even by blood who
19 consider him a father?

20 One person wrote -- 35 years old now -- to him he's
21 still Coach Mike because Mike started the basketball program
22 in the park district in his neighborhood. And he didn't just
23 spend five minutes or give some money. He grew it through
24 hard work. He coached the kids. He encouraged participation.
25 And he is to hundreds of kids from that area Coach Mike, not

1 the ruthless mobster the government says. And that isn't
2 something that can be just thrown away. And that person
3 didn't write that letter because Mike went back to the well.
4 He wrote it because he felt strongly about it. He read about
5 this case in the paper and wanted to say something else.

6 And does a ruthless criminal sit with a guy he's
7 known for a while but never was really that close to -- when
8 that guy tells him his brother is dying of cancer -- for nine
9 months almost nightly while that death spiral finally takes
10 that man's brother and be there at every step for him; not
11 just making some donation, which is easy, but giving of
12 himself, of his heart, of his concerns? And when all that was
13 over, just some months before the trial began, that individual
14 finally said, you know, Mike, how are you doing. And Mike
15 said, My only concern is for my family; I'll be okay.

16 Now, this is not to suggest, your Honor, that people
17 do not go down wrong paths in life and don't regret them and
18 haven't lived to regret them. And Michael is not the kind of
19 person that readily acknowledges such things, but it doesn't
20 mean he doesn't feel them. Because he does. And those paths
21 take you down a place, and sometimes the place that you're at
22 sticks.

23 The government talks about commitments to the mob and
24 these oaths and all these other things. But it acts as if
25 Mike Sarno himself has never been scared. I'm not just

1 talking about scared of what's going to happen to him. I am
2 talking a little bit about scared of what his prognosis is
3 because it is very guarded. He's 54. His father died at 61.
4 They're both diabetic. He's struggled with obesity. He has
5 hypertension. He's been hospitalized recently for a wholesale
6 failure in his left lung. How long is it that anybody thinks
7 he's actually got?

8 You know, I sat in Washington March of last year and
9 testified before the sentencing commission. And the gentleman
10 who testified before me was the director of the Bureau of
11 Prisons. And he was asked questions about what he thought the
12 implications of certain guideline changes were and in a very
13 apolitical way said, we are so overcrowded and overtaxed and
14 underfunded that in order to take care of the influx of
15 prisoners, given the sentences that have been imposed, we
16 would have to build between four and five new prison
17 facilities, federal prison facilities, a year to ameliorate
18 the overcrowding; and we simply just don't have the money.

19 What the government is asking your Honor to do is
20 sentence this man to life in prison without hope of ever
21 coming out, because he's not going to live 25 years. Nobody
22 thinks that.

23 The government talks to your Honor about how
24 Marcelllo, in one of their written submissions, and Calabrese,
25 while they're in prison, they're talking about criminal

1 behavior. A does it. B does it. Now, Michael Sarno was in
2 prison and has been several times before. And after your
3 Honor revoked his bond when the jury found the guilty verdicts
4 on December 22nd of 2007, has remained in custody for 13 and a
5 half months. I know this, your Honor: If there was even a
6 hint of impropriety on his part, the government would be in
7 here with supplemental memoranda and other kinds of evidence
8 to suggest aggravating circumstances. You cannot say because
9 A did something and B did something, therefore C will do
10 something and use that as an argument in aggravation. Because
11 as wide a spectrum as your Honor has of discretion, pure
12 conjecture just isn't part of that; and that's all that that
13 argument was. And it's belied by the facts.

14 There's no way to ignore, your Honor, Michael's
15 criminal past. No way to obfuscate it. No way to ignore the
16 other sentences in this case. No way to suggest that that
17 doesn't bear negatively on his character or the prospect for
18 his future.

19 But he was out on bond for 18 months. And the end of
20 this conspiracy was -- depending on when you actually look at
21 what the evidence says -- middle 2007, maybe early 2008,
22 although the first indictment came down in February of 2008 --
23 but since that time, what is it exactly that he has done --
24 what is that? -- four years now -- to suggest that he cannot
25 comply with the dictates of the law?

1 When that indictment came down in February of 2008
2 and it didn't mention him, given what your Honor has found and
3 what the government has argued -- and I think Polchan and
4 someone else was charged -- shouldn't he have run away knowing
5 what was coming? He self-surrendered. He was let out on
6 bond, and there was not a single violation report filed.

7 While in prison his criminal -- his prison record is
8 pristine. He has done nothing there to get what they call a
9 shot, to be sanctioned. He has done nothing but follow the
10 rules.

11 You cannot consider the nature and the circumstances
12 of the offense without considering the character of the
13 offender.

14 One judge said that we don't just sentence crimes; we
15 sentence people. How does somebody live, your Honor, without
16 even the faintest glimmer of hope? How does somebody survive?
17 Maybe certain people don't deserve that. And maybe your Honor
18 thinks that Mr. Sarno is one of them. But there are a hundred
19 people, at least, who disagree.

20 The people who interested me -- and they didn't know
21 each other, but they wrote the same -- were those that said
22 that Michael had found and tried to restore his faith. They
23 have spoken with him about it. A fellow parishioner had
24 written about it.

25 Isn't it possible, your Honor, given what this

1 individual has done in connection with his children, his
2 nieces, his nephews, his neighbors, his friends, the young
3 children who played basketball, isn't it possible that in
4 there somewhere is a seed of hope from which your Honor can
5 provide some leniency?

6 54 years of age with a father who died at 61 from an
7 ailment that he has. What is the prognosis for this
8 individual? Maybe more than seven years. 10? 12?

9 Can the government and is this Court so certain that
10 it is not possible for this man to change? You know, it takes
11 sometimes a lot of beatings before you're beat to the point
12 where you say no. And sometimes you have to get older and you
13 have to get sick and you have to get scared, and you come
14 around. I think the term is opsimath, one who learns late in
15 life.

16 The government says, yeah, but he hasn't learned
17 here; he went to trial; he showed no remorse. And there's
18 nobody in this courtroom that's going to deny any individual
19 their constitutional right to go to trial. And given the
20 statements that have been made today, after everything
21 everybody knows about this case, it would be hard-pressed for
22 some lawyer to say plead guilty to robberies you weren't
23 personally at and you didn't even know about. That would be
24 tough. And as hard as it is for the government to accept that
25 proposition, just maybe he went to trial because he didn't do

1 those things. I'm not talking about the gambling, but that
2 wasn't the option. He's accountable. Your Honor has so
3 found. I am not here to quibble. But what are the facts of
4 his actual involvement? And no one can suggest because an
5 individual exercises a right to go to trial that they do not
6 have remorse; that they are not filled with regret. It's just
7 that your Honor is not given the opportunity to sit down with
8 a defendant, look in his eyes and ask that question and
9 satisfy yourself one way or the other about that. But there's
10 a lot of people who do know him, who have written about him
11 and do think that.

12 His little girl is not going to see him walk down the
13 aisle like she wrote. That's not going to happen. We all
14 know that in this courtroom. We're kidding ourselves to think
15 differently. But the question is will she see him walk out of
16 prison?

17 In an old essay that I pulled out from Francis Bacon,
18 it was an observation, however antiquated, and it says, It is
19 a certain sign of wise government and careful process when it
20 can hold men's hearts by hopes when it cannot by restraints.
21 You take away hope, and there is no life.

22 People who have written about Michael and the lawyers
23 who have been with him much longer than I have formed opinions
24 about him. My dealings with him show me that other side; show
25 me that it is genuine and there's some cause to believe in

1 this man.

2 One of the Supreme Court justices said, Wisdom oft
3 time never comes. One ought not reject it merely because it
4 comes late. And it cannot be rejected out of hand that
5 Michael Sarno is not wiser and understands that he's come to
6 the end of his rope. I believe that wisdom has come to
7 Mr. Sarno, albeit late, but hopefully not too late.

8 So, your Honor, I join with those who have written in
9 Michael's behalf in asking your Honor to be as lenient as the
10 law permits.

11 Thank you, Judge.

12 MR. BHACHU: Your Honor, may I have some brief
13 rebuttal on some points? Some of them are for the record on
14 appeal, if I might, relating to the legal issue that was
15 raised.

16 THE COURT: No. Let's move forward.

17 Unless the defense has something else to add --

18 MR. STEINBACK: Your Honor, I know that Mr. Sarno
19 has --

20 THE COURT: That's my next step.

21 MR. STEINBACK: -- something that he's prepared to
22 write -- or read.

23 THE COURT: Mr. Sarno, you have an opportunity now,
24 sir, to make a statement if you wish to. You do not need to
25 make a statement. It will certainly not be held against you

1 if you do not. However, if there is something you wish to
2 say, this is your chance.

3 THE DEFENDANT: Thank you, your Honor.

4 To your Honor: Judge, as I stand before you and
5 await my sentence, I've been told I have the right to make a
6 statement. After much thought, I know what I want to say, but
7 I have serious doubts that I will be able to get through it
8 today, nevertheless, I will do my best.

9 I will not relive what we all went through during the
10 trial. I don't believe that time is now. I will simply
11 acknowledge that I have some deep regrets and leave the rest
12 to my lawyers and the process ahead.

13 But as we stand before you on this day, I want to
14 speak about a few things you'll never hear from the people at
15 the next table.

16 Despite hardships growing up, I was surely blessed to
17 have the love and support of so many and for having been
18 raised --

19 (Brief pause.)

20 MR. STEINBACK: I think, your Honor, Mr. Sarno would
21 like me to finish his statement.

22 THE DEFENDANT: Please.

23 THE COURT: Go ahead.

24 MR. STEINBACK: He is -- believes he's truly blessed
25 to have the love and support of so many and for having been

1 raised by a woman that went straight to heaven. He writes
2 that he received the same such love and guidance from two
3 older sisters. And in this life, her words come in many
4 shapes and sizes.

5 He writes that some of his rewards are as follows:
6 When his middle sister had trouble with her ex-husband, which
7 led to a divorce, he says, he was rewarded with her and her
8 three children moving in with him. He says he was rewarded
9 with watching them grow into fine adults; awarded when they
10 married wonderful partners and was blessed with seven great-
11 nieces and nephews.

12 He also says he was rewarded when he wound up with
13 two great role models, two people that he says he could turn
14 to no matter how big a problem life sent his way. He says
15 those two people just happen to be his mother-in-law and his
16 father-in-law.

17 He also, your Honor, says he was rewarded with two
18 healthy, fun-loving, wise-cracking kids that he could go on
19 for hours about; but for now he wants to keep it brief and
20 just will speak of the countless dance recitals that he and
21 the whole family all sat through waiting until it was his
22 little girl's turn to take center stage and how proud he was
23 then as he is now that she is about to finish college.

24 He says he's equally rewarded when he thinks on the
25 countless ballparks and basketball courts that he and his

1 family drove to and watched his little guy do his thing.
2 There is no reward, he says, quite like seeing your
3 12-year-old son hit a home run in Cooperstown, New York. As
4 for his son, he says, college right now is no longer an
5 option; instead, he's found himself a job and he is helping
6 his mother.

7 Those, your Honor, he says are a few of the -- of his
8 blessings and rewards.

9 And, finally, he writes, on the eve of his 22nd
10 wedding anniversary, his greatest reward and blessing is his
11 partner, his best friend, his soulmate, his wife Nicole. He
12 says she made him the luckiest man in the world 22 years ago
13 as well as 22 seconds ago.

14 He'd like to close by sharing with your Honor one of
15 his favorite sayings from his mother. We've been through
16 thick and thicker. It did not get any thicker than the trial
17 that my family and I and the many people who have supported me
18 all went through.

19 He ends by simply praying for the quickest way home
20 to the ones he loves and then says thank you.

21 THE COURT: Very well.

22 The Court has, of course, reviewed the presentence
23 investigation report and its many supplemental reports as
24 well; the many filings of the attorneys from both sides,
25 including the reference and the character letters on behalf of

1 the defendant. I take into account the arguments today of the
2 attorneys and the defendant's statement. I also take into
3 account the evidence heard during the course of the trial.

4 Let me just specifically say that the hardship to the
5 defendant's family, his children, the people around him, the
6 Court has no doubt is real and is -- the word unfortunate
7 seems insufficient, but it's the only word I can think of.
8 For they, of course, have been accused and convicted of
9 absolutely nothing; and that they should suffer is indeed a
10 tragedy.

11 Taking into consideration all of the information
12 before me, the Court intends to enter the following sentence:
13 Pursuant to the Sentencing Reform Act of 1984, it is the
14 judgment of the Court that the defendant is hereby committed
15 to the custody of the Bureau of Prisons to be imprisoned for a
16 term of 240 months on Count One and 60 months on Count Two, to
17 be served consecutively, for a total sentence of 300 months.

18 The defendant is ordered to pay restitution in the
19 amount indicated by the government in its argument. The Court
20 will impose no fine, waives costs of incarceration and
21 supervision.

22 Upon release from imprisonment, the defendant shall
23 be placed on supervised release for a term of three years on
24 both counts, to be served concurrently, for a total of three
25 years.

1 While on supervised release, he shall not commit
2 another federal, state or local crime; shall comply with the
3 standard conditions and the following additional conditions:
4 He shall refrain from any unlawful use of a controlled
5 substance; shall submit to one drug test within 15 days of
6 release from imprisonment and random testing thereafter, not
7 to exceed 104 tests per year. The defendant shall cooperate
8 in the collection of a DNA sample. The defendant shall not
9 possess a firearm or any other destructive device; and if
10 required by the probation officer shall participate in a
11 mental health treatment program related to gambling addiction.

12 The Court also imposes the statutory cost of \$250 for
13 the conviction on the two counts, which is required by
14 statute.

15 I want to make a finding with respect to the sentence
16 as well. The Court finds that the sentence of 300 months that
17 I have imposed with respect to the custody is appropriate in
18 this case even if it were to be found that the sentence
19 exceeds the properly calculated guideline range.

20 My finding is based upon the consideration of the
21 sentencing factors contained in 18 United States Code, Section
22 3553(a). Specifically in that regard, the Court finds that
23 the defendant has been twice previously convicted of felony
24 offenses, one of those offenses a racketeering conspiracy and
25 illegal gambling offense and thus a very similar offense to

1 the case at bar. The other was for extortionate extensions of
2 credit. Both of these convictions ended up in a total
3 sentence apparently of 86 months of imprisonment, which, it is
4 clear, unfortunately, failed to deter him in any way from
5 further criminal conduct. On the contrary, it appears that
6 the defendant, from the moment he was released from those
7 prison sentences, embarked on a trail of forming the criminal
8 enterprise that he has been convicted of in this current
9 indictment.

10 He appears to have had a single-minded determination
11 to continue to engage in criminal conduct of an organized
12 nature involving racketeering and gambling and, as a
13 by-product, violence. The Court simply cannot ignore the fact
14 that during the course of this criminal conspiracy, the
15 defendant was an organizer, a supervisor, a leader of a group
16 of individuals who were responsible for criminal conduct in at
17 least four separate states. Robbed victims, tied them up,
18 pointed guns at them, stabbed them, and shot them, and then
19 blew up a building on a public street in this community.

20 To sum it up briefly, the danger to the public, to
21 those people who are not his family members, are not people he
22 apparently loves, the danger to them from being stabbed, shot
23 and having bombs detonated on public streets is grave; and the
24 likelihood that the defendant will continue to engage in this
25 dangerous conduct appears to me from his history and all that

1 I have seen to be very great. The need to protect the public
2 is therefore very high.

3 In addition, there is a clear need to send a message
4 to those waiting to follow in the defendant's footsteps that
5 it would be unwise to do so. It would be detrimental to the
6 public interest for this Court or any other to leave the
7 impression that one can engage in a lifetime of crime in the
8 hope of avoiding capture and conviction until the very end and
9 then retire to some sort of peaceful existence after having
10 wreaked havoc and chaos among others.

11 For these reasons, I'm convinced that the sentence of
12 300 months in this case is appropriate regardless of the
13 propriety of the difficult guideline calculation in this case.

14 Are there any questions about the Court's intended
15 sentence?

16 MR. STEINBACK: The only comment I would make or
17 request actually is that we be given a seven- to ten-day
18 period to obtain the records necessary to supplement the
19 medical history for Michael before the J and C goes out and he
20 is designated to make sure that the Bureau of Prisons knows
21 what they need to do.

22 THE COURT: Granted. Just advise us of when you've
23 accomplished that.

24 MR. STEINBACK: Thank you, your Honor.

25 THE COURT: I want, sir, to advise you at this time

1 that you have the right to appeal your conviction and also
2 your sentence as well if you believe there was some
3 fundamental defect in your trial or that the sentence itself
4 is somehow unlawful or inappropriate.

5 You have the right to file a notice of appeal. You
6 have the right to apply for leave to appeal in forma pauperis,
7 which means without having to pay the usual fee, and the clerk
8 of the court will prepare and file a notice of appeal for you
9 if you request it.

10 With few exceptions, any notice of appeal that you
11 file, whether it be an appeal of your conviction or of your
12 sentence or both, must be filed within 14 days of the actual
13 entry of the judgment I have announced I intend to enter.

14 I assume you will be filing a notice of appeal on
15 behalf of the defendant?

16 MR. GILLESPIE: Yes, your Honor.

17 THE COURT: Very well.

18 Anything else?

19 MR. GILLESPIE: Your Honor, as to us coming back on
20 Friday if we don't resolve this, you don't need the defendant
21 here, do you, sir? On the monetary --

22 THE COURT: On the forfeiture? No.

23 MR. GILLESPIE: Okay.

24 THE COURT: All right. I think that's it then.

25 MR. BHACHU: Thank you, your Honor.

1 MR. DIAMANTATOS: Thank you, your Honor.

2 MR. DONOVAN: Thank you, your Honor.

3 MR. GILLESPIE: Thank you, sir.

4 MR. STEINBACK: Thank you, your Honor.

5 * * * *

6
7 I certify that the foregoing is a correct transcript from the
record of proceedings in the above-entitled matter.

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9
10 /s/ Nancy C. LaBella
Official Court Reporter

July 13, 2012

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